Small Business Regulatory Review Board Meeting

Wednesday, July 18, 2018

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrrb
Tel 808 586-2594

AGENDA
Wednesday, July 18, 2018 ★ 10:00 a.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

I. Call to Order

II. Approval of June 20, 2018 Meeting Minutes

III. New Business

A. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 186, **Petroleum Products Accounting and Inspection**, promulgated by Department of Agriculture – *attached and incorporated as Exhibit 1*

IV. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing of the Proposed Repeal of Hawaii Administrative Rules (HAR) Title 11 Chapter 281, and Adoption of HAR Title 11 Chapter 280.1, **Underground Storage Tanks** promulgated by Department of Health – *attached and incorporated as Exhibit 2*

B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 19 Chapter 20.1, **Commercial Services at Public Airports**, promulgated by Department of Transportation – *attached and incorporated as Exhibit 3*

V. Administrative Matters

A. Assignment of Board Members' "Discussion Leader Assignments" for State Agencies' Administrative Rule Review

B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes

VI. Next Meeting: Scheduled for Wednesday, August 15, 2018, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2399 at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of June 20, 2018 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - Draft
June 20, 2018
Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

I. CALL TO ORDER: Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:
- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Nancy Atmospera-Walch
- Kyoko Kimura
- Reg Baker
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto

STAFF: DBEDT
Dori Palcovich
Ashleigh Garcia

Office of the Attorney General
Jennifer Waihee-Polk

II. APPROVAL OF MAY 16, 2018 MINUTES

Vice Chair Cundiff made a motion to accept the May 16, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to Chapters I – V, Board of Water Supply Rules and Regulations, in compliance with Sections 54 – 26, Hawaii Revised Statutes, for the Adoption of New Water Rates and Charges, promulgated by Board of Water Supply, City and County of Honolulu

Mr. Ernest Lau, Manager and Chief Engineer at the Board of Water Supply (BWS), advised the members that funds from the increased water rates will contribute to investments in pipe replacements due to rising sea levels and slide areas. He discussed the history of BWS, which was created in 1929, stating that it is semi-autonomous and has a separate board that governs that policies and water rates of the department. As BWS is financially self-sufficient due to incoming water fees, it operates essentially as a utility.

BWS services approximately 145 million gallons of water per day to one million customers on Oahu with 170,000 active services, 13 treatment facilities, and water sources all over the island. It has developed a 30-year program to invest in 800+ infrastructure projects island-

wide with total costs over $5.3 billion and a 10-year financial plan. BWS has a stakeholder advisory committee; it has been meeting for the past three years and brings a lot of input into BWS's financial plans; this effort will continue.

He summarized the "initial" public hearing input which included 65 attendees at four hearings, televised on Olelo and resulted in dozens of questions across a wide range of issues. Other public input resulted in 18 written comments, four telephone calls in support of the changes, 13 in opposition, and eight comments not related to the rate changes.

Depending on the size of the water meter, the current rate charge for residential customers is $9.26 with twelve charges per year. For non-residential water, the proposed rates per gallon are: $4.96 – July 2018; $5.01 – July 2019; $5.06 – July 2020; $5.16 – July 2021; and $5.27 – July 2020; all rate increases will begin July 2019. Also discussed were agricultural water rates, non-potable and recycled water rates, and multi-unit residential rates.

In response to various inquiries, Mr. Lau qualified the increase in the agricultural water rates, explained the residential water rates, and stated that there are currently seven large back-up generators. Mr. Lydgate suggested that BWS consider adopting water sensors for farmers to assist in reducing the water rates. Mr. Dexter Gomes, project manager for Magic Island Productions, questioned whether BWS has been working on water conservation. In response, Mr. Lau stated that the water rebate program is being brought back and will begin with the "residential" water customers.

Chair Borge noted that water is a valuable resource and keeping up with the infrastructure has always been a challenge; he appreciated Mr. Lau's explanation of BWS's amendments. The rules are expected to come back to this Board in August 2018 after the public hearing.

Mr. Ritchie made a motion to pass the rules onto public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 20 Chapter 26, Public and Commercial Activities on Mauna Kea Lands, promulgated by University of Hawaii (UH)

Mr. Jesse Souki, UH's Associate General Counsel, stated that the new proposed rules will regulate the commercial and public activity on Mauna Kea Lands, which may include managing control public access.

The businesses impacted by these rules include commercial entities using sport utility vehicles, trucks, taxis, vans and buses. Commercial tours which currently take place under prior permits issued by DLNR and transferred to the University will expire by the terms of those existing permits once a new permitting system is established under the proposed rules. Although the proposal does not establish permit fees, the rules do incorporate fines for rule violations as set forth under Act 132; permit fees are to be set at a public meeting once the proposed rules have been passed.

Mr. Souki explained the current conditions on Mauna Kea - there are between 224,000 to 300,000 visits per year; the University charges operators $6 for adults and $2 for students; fees are deposited into the Mauna Kea Lands Special Fund; there is currently a maximum of

eight commercial tour permits each with an allowance of two, 14-passenger vans on the mountain during evening tour periods and three during the day. These are the eight permits transferred to the University by the DLNR.

In addition, under the proposed rules, commercial activity at Mauna Kea includes the exchange or buying and selling of goods, or providing of services, or relating to or connected with trade, traffic or commerce in general. Commercial activities include activities whose base of operations are outside the boundaries of the UH management areas or provide transportation to, from, or within the UH management areas.

Testifier Mr. Rob Pacheco, president of Hawaii Forest and Trail, who also served on the Mauna Kea Management Board, expressed his support of the importance and need for the proposed rules. However, he has concerns regarding: 1) the permit's transferability which is revocable within a thirty-day period under existing permit conditions, 2) the proposed lottery concept, and 3) the current permit termination clause.

Testifier Mr. James Stagg from Taikobo Hawaii, who provides tours on Maua Kea, expressed concern regarding the loss of permits. He stated that due to the current volcano incidents, there is a need for increasing the Japanese tourism, therefore, the loss of permits will substantially hinder this effort and the company's overall business. In response, Mr. Souki explained that the permits do not terminate *per se* once the rules are passed. It will take time following the approval of the rules to develop a new permitting system. It is not the University's intention to immediately issue a 30-day termination notice. Instead, the existing eight permits will remain in effect while the new permitting system is established and then implemented. The existing eight permits have already expired but have been continued by the Office of Maunakea Management (OMKM). OMKM will work with existing permittees to provide advanced notice.

Chair Borge stated that there is obviously more rule-making to be accomplished, particularly as it relates to the concerns from the small business stakeholders regarding the permitting process and fear of losing their businesses; despite these businesses investing substantial amounts of money, there is an uncertain result. He encouraged the agency to include the stakeholders in meetings to help resolve some of their concerns, and requested that Mr. Souki come back to this Board after the public hearing to share the feedback.

Mr. Baker made a motion to pass the rules onto the Governor for public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division, promulgated by Department of Labor and Industrial Relations (DLIR), as follows:

   i. Part 1, General Legal and Administrative Provisions for Occupational Safety and Health
      a. Chapter 50, General Provisions and Definitions
      b. Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses

c. Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements

ii. Part 2, General Legal and Administrative Provisions for Occupational Safety and Health
   a. Chapter 60, General Safety and Health Requirements

iii. Part 3, Construction Standards
   a. Chapter 110, General Safety and Health Requirements

iv. Part 5, Occupational Safety and Health Standards for Shipyard Employment
   a. Chapter 170, Shipyards

v. Part 6, Marine Terminals
   a. Chapter 180, Marine Terminals

vi. Part 7, Safety and Health Regulations for Longshoring
   a. Chapter 190, Longshoring

vii. Part 8, Other Safety and Health Standards
   a. Chapter 208, Other Safety and Health Standards

Mr. Norman Ahu, DLIR's HIOSH Administrator, stated that he adhered to Chair Borge's recommendation that HIOSH hear from the stakeholders; as a result, several meetings were held which he believes went well and benefited both the stakeholders and HIOSH.

During the meetings, comments and suggestions were made; in response, HIOSH was able to answer the many questions and resolve misconceptions. Also, one additional change was made due to the suggestion of one of the stakeholders. In addition, all the questions and comments posed at the meetings were recorded and are posted on HIOSH's website. It was noted that only one testifier showed up at the public hearing but the comment made was not related to the proposed amendments.

Chair Borge stated that the end result of the stakeholders' involvement was very beneficial as public health and safety are of utmost concern for everyone; he applauded HIOSH for involving the stakeholders due to this Board's recommendation.

Ms. Kimura made a motion to pass the rules onto the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

B. Re-discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Ms. Dre Kalili, Revenue Enhancement Manager from DOT's Harbors Division, reminded the members that pursuant to Deputy Director Ross Higashi's reporting to this Board last month, the proposed rules were re-addressed after discussion meetings with the stakeholders were held. Subsequently, there is now approval to go through a "statewide" public hearing process, which begins Monday, June 25th and ends in Kauai on Friday, June 29th. On or around July 3rd, the outcome of the public hearings will be announced.

Discussion leader Mr. Ritchie stated that the revisions appear to depict a balanced playing field. Ms. Kalili concurred and explained DOT's process in redrafting the existing

amendments. She also explained the difference in the requirements for drivers for the City and County of Honolulu versus the State's requirements.

Testifier, Mr. Arthur Hughes, owner of Island Limousine and one of Uber's first partners, expressed his concerns with having the option to be regulated by another company and paying additional fees; he believes all drivers should have fixed permanent decals/stickers on the vehicles.

Testifier Ms. Lynda Kernaghan, a Lyft and Uber driver, expressed concerns in attaining DOT's insurance requirements, and that the airport pick-up areas and sign usage had not been addressed in the rules. Ms. Kalili responded that the pick-up area is well acknowledged in the pilot program but once the program is completed in August 2018, DOT will then assess the whole program regarding the demand and actual usage of Uber and Lyft.

Chair Borge applauded the agency for revising the amendments, which is a step in the right direction, and encouraged DOT to not let it stop here but to continue a dialogue with the small business stakeholders in order to establish more conductive rules; he added that this Board wants to see small businesses flourish and grow.

Ms. Kimura made a motion to pass the rules onto the Governor for public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 218, Kakaako Reserved Housing Rules, promulgated by Department of Business Economic Development and Tourism / Hawaii Community Development Authority (HCDA)

Discussion Leader Mr. Ritchie reminded the board members that HCDA already went to public hearing and is now coming back to this Board after the hearing.

Mr. Deepak Neupane, Director of Planning and Development at HCDA, provided this Board with background on the proposed amendments and stated the Governor had originally sent the rules back to HCDA prior to public hearing as he was not comfortable with a thirty-year buy-back plan, and recommended creating a ten-year plan instead. Any business impact would be to the small construction and development companies. At the public hearing, the businesses were in support of the rules and the ten-year buy-back plan.

Mr. Ritchie made a motion to pass the rules onto the Governor for adoption. Mr. Baker seconded the motion, and the Board members unanimously agreed.

V. EXECUTIVE SESSION UNDER SECTION 92-5(4), HAR

A. Consultation with the Board's attorney regarding questions and issues that pertain to the Board's Powers, Privileges, Immunities, and/or Liabilities under Chapter 201M, HRS, the Governor's Administrative Directive 18-02, and Chapter 84, Code of Ethics, HRS

The Board opted not to go into executive session; instead, Deputy Attorney General Waihee-Polk discussed the following items of concern with the members.

Regarding Chapter 201M, HRS, the Board should keep in mind that it reviews rules for small businesses; therefore, members should attempt to stay in-line with the specific administrative rules being reviewed. Members can request information from the agencies, but cannot make mandates.

In regard to Chapter 84, Code of Ethics, HRS, no board member can take official action including voting, recommending, approving or disapproving an action that directly affects a business, or any other undertaking which a member may have a substantial interest; this includes interests of spouses and dependent children. Thus, each member is responsible for recusing themselves when it would be deemed necessary. If a member believes there is a conflict of interest within a rule, notify DBEDT staff as it may affect quorum in voting on a rule. A member may also contact the Ethics Commission directly and speak with an attorney of the day. Violations of the Code of Ethics can result in voiding the action.

Regarding Sunshine Law, there should be no contact among board members on board business "outside" of an open meeting; this includes communication via telephone, email, and social media. Members were reminded that if they receive an email from DBEDT or the chair they should not reply "all" as this would potentially result in an accidental "discussion." However, two people can discuss board business if no commitment to vote is made. Violations of Sunshine Law can result in voiding the action.

Finally, in regard to "rules of order," it is helpful to be clear on the motions; so, when a motion is made it needs to be seconded and then discussed.

VI. ADMINISTRATIVE MATTERS

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

Chair Borge announced that Ms. Kimura will be leaving this Board and moving onto the HTA Board. He thanked Kyoko for her hard work and service as an SBRRB member since 2012. He also welcomed Ms. Ashleigh Garcia as the Board's new, temporary administrative assistant.

It was announced that DBEDT has committed funds toward revamping the SBRRB's website with HIC (Hawaii Information Consortium) and a contract is currently in the works.

Chair Borge thanked the members for being on time, especially to the neighbor island members.

Due to the Board having new members, group leader assignments will be discussed at the next meeting. Mr. Baker suggested that the discussion leader assignment listing be sent to each member to review prior to the next board meeting.

Going forward, DBEDT staff will upload the Board agenda packets on the website's monthly calendar in a couple of ways – one large upload and also two or more uploads.

VII. NEXT MEETING – The next meeting is scheduled for Wednesday, July 18, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VIII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting, and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 12:35 p.m.

III. New Business

A. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 186, **Petroleum Products Accounting and Inspection**, promulgated by DoAg

PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Department or Agency: Agriculture

Administrative Rule Title and Chapter: Chapter 4-186

Chapter Name: Petroleum Products Accounting and Inspection

Contact Person/Title: Jeri Kahana, Quality Assurance Division Administrator

Phone Number: 832-0705

E-mail Address: Jeri.M.Kahana@hawaii.gov Date: May 29, 2018

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.

Are the draft rules available on the Lieutenant Governor's Website pursuant to HRS §91-2.6? Yes ☐ No ☑

If **Yes**, provide webpage address: http://hdoa.hawaii.gov/meetings-reports/proposedar/

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** ☐

"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 enterprise consisting of fewer than one hundred full-time or part-time employees." (HRS §201M-1)
(If No, you do not need to submit this form.)

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?** (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) (HRS §201M-2(d)) **Yes** ☐ **No** ☑ (If Yes, you do not need to submit this form.)

IV. **Is the proposed rule being adopted pursuant to emergency rulemaking?** (HRS §201M-2(a)) **Yes** ☐ **No** ☑ (If Yes, you do not need to submit this form.)

* * *

If the proposed rule(s) affect 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 directly affected by, bear the costs of, or directly benefit from the proposed rules, that are required to comply with the proposed rules, and how they may be adversely affected.

The proposed rules is to redefine the definition of gasoline which may contain blend of gasoline and ethanol, and update references to the current specifications of various petroleum products.

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.

There are no fees or fines. This a housekeeping measure.

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.

None

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

None

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

None

d. Criteria used to determine the amount of the fee or fine.

None

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.

There will be no cost and benefits to the department or other agencies..

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.

There is no impact anticipated.

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

None.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses.

None.

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

The department received a request to allow the flexibility to blend motor fuel containing ethanol with up to 10% ethanol.

   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.

No recommendations were provided. Currently, there is no requirement for the blending of gasoline with ethanol, however, the change will allow the flexibility to blend gasoline with up to 10% ethanol.

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.

No, the amendments are comparable or less stringent than other state or county standards.

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.

* * *

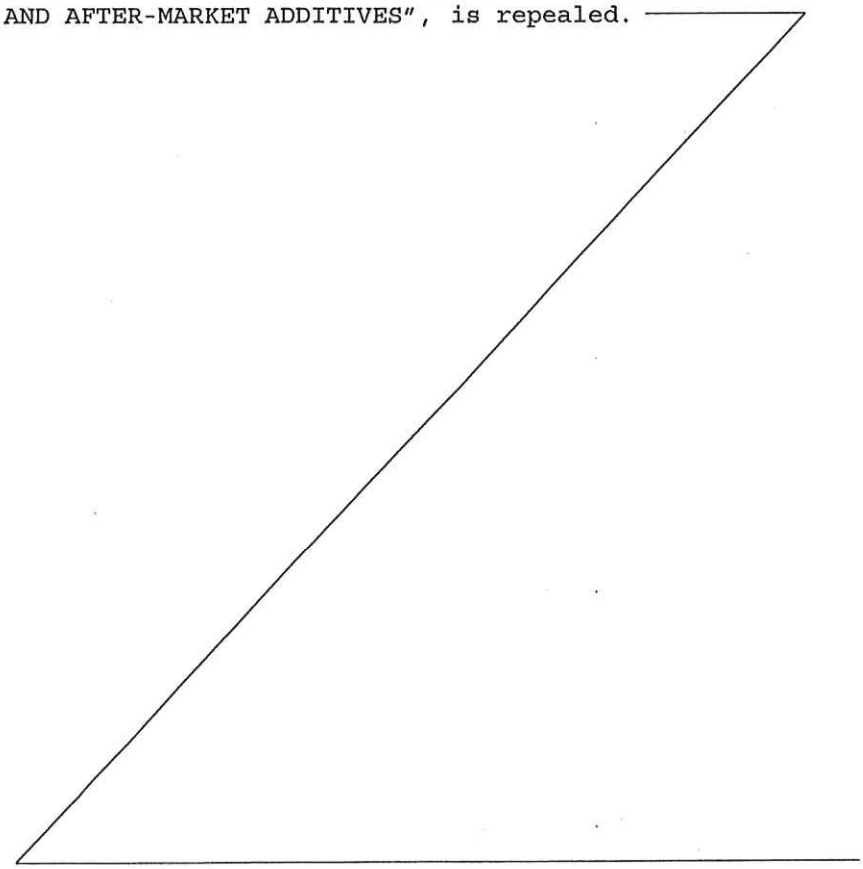
DEPARTMENT OF AGRICULTURE

Repeal of Chapter 4-86
Hawaii Administrative Rules

Month xx, 2017

SUMMARY

1. Chapter 4-86, Hawaii Administrative Rules, entitled "BRAKE FLUIDS, COOLANTS, PETROLEUM PRODUCTS, AND AFTER-MARKET ADDITIVES", is repealed.



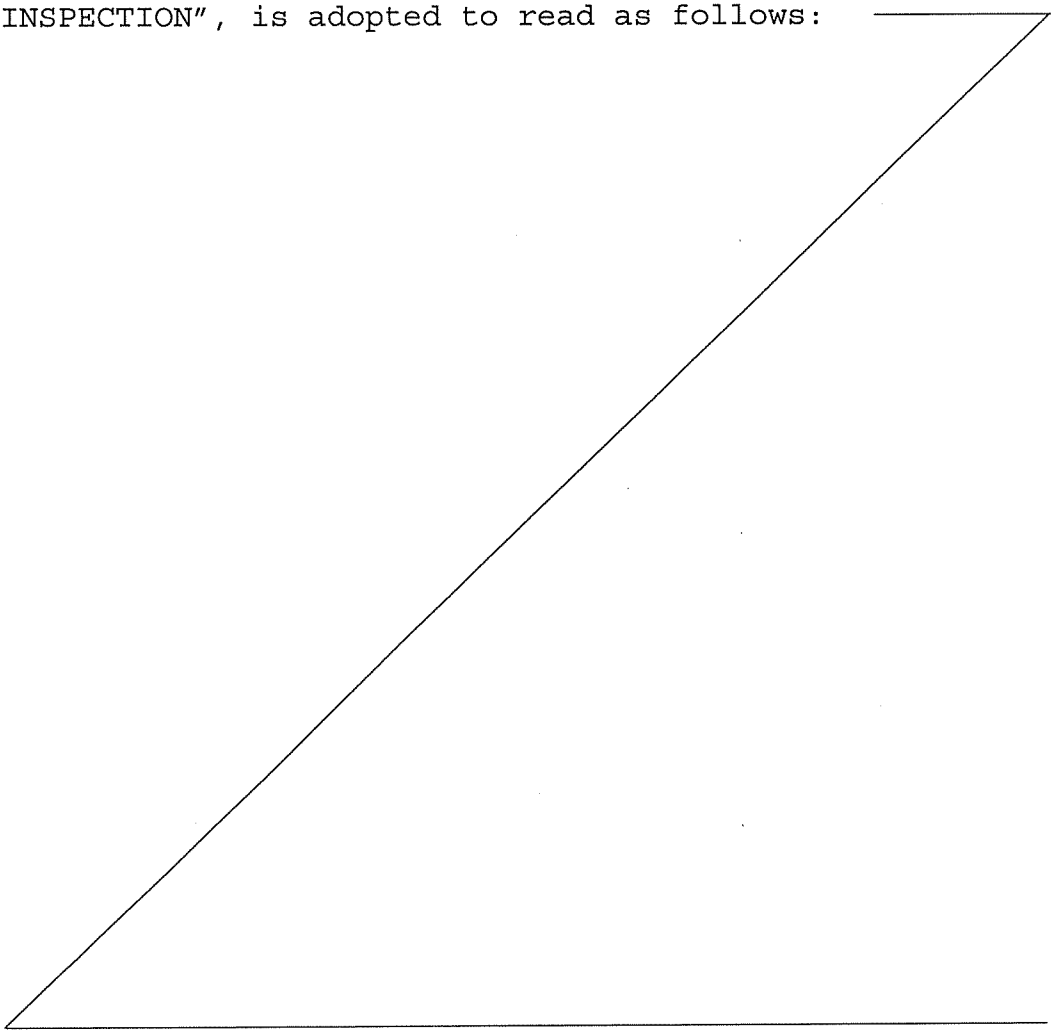
DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-186
Hawaii Administrative Rules

Month xx, 2017

SUMMARY

2. Chapter 4-186, Hawaii Administrative Rules, entitled "PETROLEUM PRODUCTS ACCOUNTING AND INSPECTION", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 186

PETROLEUM PRODUCTS ACCOUNTING AND INSPECTION

Historical note: This chapter is based substantially upon chapter 4-86. [Eff 1/27/71; am 9/6/79; am 12/26/81; R]

§4-186-1 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remainder of this chapter and, to this end, any of the provisions of this chapter are severable. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §486-37)

§4-186-2 Violation. Any person omitting the required acts or committing the prescribed acts, or delivering a product not in compliance with specifications, or through a device not in compliance with the requirements of this chapter shall be in violation of this chapter and subject to the provisions of chapter 486, Hawaii Revised Statutes. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §486-53)

§4-186-3 Applicability. This chapter applies to brake fluids, coolants, petroleum products, additives, and their specifications, and to persons or activities involving these products. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §486-51)

§4-186-4 Definitions. As used in this chapter:

"Actual density" or "relative density" means the observed density or observed relative density, respectively, determined at a product temperature of sixty degrees Fahrenheit or which has been corrected to sixty degrees Fahrenheit, and is expressed by the relationship: relative density sixty/sixty degrees Fahrenheit equal one hundred and forty-one and five tenths divided by the quantity API gravity at sixty degrees minus one hundred and thirty-one and five tenths (Relative density 60/60°F = 141.5);

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

"After-market additive" means a commodity marketed for addition, by the consumer or a person other than Require the manufacturer, to a liquid petroleum product for purposes of enhancing the characteristics of the liquid petroleum product or its performance, as in an internal combustion engine;

"API" means American Petroleum Institute;

"API gravity" means the relationship expressed by degrees API equal one hundred and forty-one and five tenths divided by relative density as sixty/sixty degrees Fahrenheit, minus one hundred thirty-one and five tenths, and is abbreviated °API. (°API = Relative Density 60/60°F - 131.5);

"ASTM" means American Society for Testing and Materials International;

"Base-gasoline" means the gasoline component of a gasoline-ethanol blend;

"Degrees API" means API gravity, which is a special density scale adopted in 1921 by the national bureau of standards in lieu of the Baumé scale;

"Density" means the mass per unit volume;

"Ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D4806. Ethanol is intended to be used as a gasoline blend component for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of a substance approved by the Alcohol and Tobacco Tax and Trade Bureau (ATTB) prior to blending with gasoline;

"Gasoline" means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition, internal combustion engines, and which may contain ethanol;

"Gravity" means API gravity;

"Inspector: means an employee of official of the department of agriculture authorized to administer and enforce this chapter;

"LPG" means liquefied petroleum gas in the liquid state;

"Market" or "marketing" means the activities and actions leading to the sale or potential sale of a

commodity. It includes all aspects of trade and commerce, labeling, merchandising, mercantiling, and selling the net measure of a commodity;

"Observed density" or "observed relative density" means the value observed on the scale of a hydrometer when the scale indication is read at the point where the principal surface of the liquid would intercept the stem of the immersed hydrometer if there were no meniscus, the principal surface being read as a flat plane rather than an ellipse. It is an incorrect indication of the density of the product unless the liquid temperature is, or is corrected to, sixty degrees Fahrenheit. (See "actual density");

"Petroleum Measurement Tables" means the following tables, ASTM D1250-08(2013)e1, Standard Guide for Petroleum Measurement Tables as published by the ASTM October 2015:

API Manual of Petroleum Measurement Standards (MPMS) Chapter 11.1-2004 Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils (Including Addendum 1-2007); or

ASTM D1250-80 (Annex A1 of D1250-07)

Volume I:

Table 5A--Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F;

Table 5B--Generalized Products, Correction of Observed API Gravity to API Gravity at 60°F;

Table 6A--Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F;

Volume II:

Table 6B--Generalized Products, Correction of Volume to 60°F Against API Gravity at 60°F;

Volume III:

Table 23A--Generalized Crude Oils, Correction of Observed Relative Density to Relative Density 60/60°F;

Table 24A--Generalized Crude Oils, Correction of Volume to 60°F Against Relative Density 60/60°F;

Volume V:

Table 23B--Generalized Products, Correction of Observed Relative Density to Relative Density 60/60°F;
Table 24B--Generalized Products, Correction of Volume to 60°F Against Relative Density 60/60°F;
Volume VI:
Table 53A--Generalized Crude Oils, Correction of Observed Density to Density at 15°C;
Table 54A--Generalized Crude Oils, Correction of Volume to 15°C Against Density at 15°C;
Volume VIII:
Table 53B--Generalized Products, Correction of Observed Density to Density at 15°C;
Table 54B--Generalized Products, Correction of Volume to 15°C Against Density at 15°C and the following tables, as listed in the petroleum measurement tables D1250-08, as published by the ASTM in the eleventh edition, August 2007;
Table 2--Temperature conversions;
Table 8--Pounds per U. S. gallon at sixty degrees Fahrenheit and U. S. gallons at sixty degrees Fahrenheit;

"Petroleum product" means automotive gasoline, diesel fuels, fuel oils, liquefied petroleum gas both liquid and vapor, residuals, distillates and fractions, kerosene, aviation fuels, turbine fuels, solvent, hydrocarbons or synthetics, crude oil, lubricating oil, or any other oil or distillate or blends of the above, or any other product that may normally be considered a petroleum product, and synthetic natural gas or natural gas and manufactured gas or blends thereof;

"Relative Density 60/60°F" means the ratio of the weight of a given volume of oil at sixty degrees Fahrenheit to the weight of the same volume of water at sixty degrees Fahrenheit, both weights being corrected for the buoyancy of air;

"SAE" means the Society of Automotive Engineers International, or SAE International;

"Sealed" or "in seal" means a measurement standard, licensed for current use, which has been approved as to type by the administrator, and tested

by the administrator, inspector, or a registered service person for correctness and found to be in compliance and to which has been affixed a seal attesting to such correctness and compliance. A device, which has been relocated or exchanged subsequent to sealing and which by design is not considered portable shall, when any such action is undertaken, lose its seal;

"Sixty/sixty °F" is a dimensionless number, expressing the ratio of the weight of a specific volume of petroleum product, the temperature of which is sixty degrees Fahrenheit, to the exact same volume of water, the temperature of which is sixty degrees Fahrenheit. It is abbreviated 60/60°F; and

"Viscosity" is a measure of the resistance of a fluid to flow. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-50)

§4-186-5 Incorporation of federal general code. National Institute of Standards and Technology Handbook 44 and Handbook 130, 2018 Edition are incorporated in and made a part of this chapter. [Eff] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-186-6 Specialty additive claims; substantiation. The making of a general or specific claim on the label of a specialty or after-market additive, marketed in the State, shall be substantiated and documented by the manufacturer or distributor, upon written request of the administrator.

(1) Failure to support the labeled claim by certified documentation from a recognized testing laboratory may result in the product being ordered "off-sale" until the documentation is received.

(2) In the absence of any documentation supporting the labeled claims, tests may be conducted by the manufacturer or distributor

in accordance with established procedures of the environmental protection agency to verify the label claims. The results of the tests shall be submitted to the administrator within one hundred and eighty-one days of receipt of the administrator's request. [Eff] (Auth: HRS §§486-56) (Imp: HRS §§486-56)

§4-186-7 Compliance with advertising or labeled claims required. Any product subject to this chapter shall satisfactorily perform as advertised or claimed on its label. If it is the intent of the manufacturer or distributor to limit or otherwise qualify the product's use, its labeling and advertising shall reflect this fact.
[Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-7, 486-56)

§4-186-8 Disposal of noncomplying products. The administrator may dispose of any product subject to this chapter which fails to meet the requirements herein and which, after notification in writing, the manufacturer or distributor has failed to effect remedial action." [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-7, 486-56)

§4-186-9 Misrepresentation prohibited. Misrepresentation in any manner is prohibited.
[Eff] (Auth: HRS §§ 486-7, 486-56) (Imp: HRS §§486-7, 486-56)

4-186-10 Specifications for petroleum products. The following specifications shall apply to petroleum products intended for consumer use:

(1) Automotive gasoline shall conform to ASTM D4814-07B, class C volatility only, adopted on December 7, 2007;

(2) Aviation gasoline shall conform to ASTM D910-17, as published in annual book of ASTM standards, section 5, 2017 edition;
(3) Diesel fuel oils shall conform to ASTM D396-17, as published in 2017 annual book of ASTM standards, section 5, 2017 edition;
(4) Fuel oils shall conform to ASTM D396-17, as published in 2017 annual book of ASTM standards, section 5, 2017 edition;
(5) Hydrocarbon dry-cleaning solvent shall conform to ASTM D235-02, as published in 2012 annual book of ASTM standards, part 23, 2012 edition;
(6) Kerosene shall conform to ASTM D3699-13, as published in 2013 annual book of ASTM standards section 5, 2013 edition;
(7) Jet aviation turbine fuel shall conform to ASTM D6615-15a, as published in 2015 annual book of ASTM standards, section 5, 2015 edition;
(8) Liquefied petroleum gas shall conform to ASTM D1835-16 as published in 2016 annual book of ASTM standards, section 5, 2016 edition;
(9) Denatured fuel ethanol for blending with gasoline for use in automotive spark-ignition engines shall conform to ASTM D4806-07, as published in 2008 annual book of ASTM standards, section 5 2008 edition;
(10) Gasoline blended with denatured fuel ethanol shall be blended under any of the following three options:
    (A) The base gasoline used in such blends shall meet the requirements of ASTM D4814-13b;
    (B) The blend shall meet the requirements of ASTM D4814-13b; or
    (C) The base gasoline used in such blends shall meet all the requirements of ASTM D4814-013b except distillation, and the blend shall meet the distillation

requirements of the ASTM 4814-013b specification; and

(11) Blends of gasoline and ethanol shall not exceed the ASTM D4814-13b vapor pressure standards. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-11 Brake fluid. The following appropriate specification shall apply to brake fluid, its containerization, labeling, handling, and dispensing:

(1) Motor vehicle brake fluid shall conform to SAE J1703, as published in SAE handbook, 2016 edition;

(2) Motor vehicle brake fluid container compatibility shall conform to SAE J75, as published in SAE handbook, 2006 edition; and

(3) Production, handling, and dispensing of motor vehicle brake fluid shall conform to SAE J1703, as published in SAE handbook, 2017 edition. [Eff] (Auth: HRS §§486-7-486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-12 Automotive antifreeze coolants and coolants. The following specifications shall apply to automotive antifreeze coolants and automotive coolants:

Automotive antifreeze coolants and automotive coolants shall be of the ethylene-glycol type and shall conform to SAE J1034, as published in SAE handbook, part 1, 2000 edition.

(1) The minimum concentration of ethylene-glycol permitted in an automotive coolant offered for retail sale in the State shall be at least ninety percent by volume; and

(2) The label of the container of an automotive antifreeze coolant and automotive coolant shall disclose the minimum ethylene-glycol

content, as a volume percent of the coolant. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-13 Lubricants. The following specifications shall apply to lubricants:

(1) Engine oil performance and engine service classification shall conform to SAE J183, as published in SAE handbook, part 1, 2017 edition;

(2) Engine oil viscosity classification shall conform to SAE J300, as published in SAE J300, as published in SAE handbook, part 1, 2015 edition;

(3) Engine oil tests shall conform to SAE J304, as published in SAE handbook, part 1, 2016 edition;

(4) Physical and chemical properties of engine oils shall conform to SAE J357, as published in SAE handbook, part 1, 2016 edition;

(5) Automotive lubricating greases shall conform to SAE J310, as published in SAE handbook, part 1, 2005 edition;

(6) Automatic transmission fluid shall conform to SAE J311, as published in SAE handbook, part 1, 2000 edition; and

(7) Axle and manual transmission lubricants shall conform to SAE J308, as published in SAE handbook, part 1, 2007 edition.

[Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-14 Hawaii standard petroleum measurement tables. (a) The density and volume of petroleum products shall be determined, verified, and delivered in accord with the appropriate Hawaii standard petroleum measurement table.

(b) It shall be the responsibility of a petroleum product supplier, as relates to the temperature and density of petroleum products marketed intrastate, to

constantly monitor and display these characteristics and conditions, for inclusion by the measuremaster, on all certificates of measure posted at all rack meter loading facilities. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-15 Stay or delay of requirements. The chairperson may, for reasons of supply, stay, postpone, delay the effective date, or set aside any requirement of this chapter, under emergency controlled conditions, for a period not to exceed one hundred and eighty days." [Eff] (Auth: HRS §§487-7) (Imp: HRS §487-7)

3. The repeal of chapter 4-86, Hawaii Administrative Rules, and the adoption of chapter 4-186, 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 Month xx, XXX, and filed with the Office of the Lieutenant Governor.

SCOTT E. ENRIGHT
Chairperson
Board of Agriculture

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing on the Proposed Repeal of HAR Title 11 Chapter 281, and Adoption of HAR Chapter 280.1, **Underground Storage Tanks**, promulgated by DOH

DAVID Y. IGE
GOVERNOR OF HAWAII

BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

June 21, 2018

Dear Small Business Regulatory Review Board,

Please find attached the Post-hearing Small Business Impact Statement for proposed repeal of chapter 11-281, Hawaii Administrative Rules (HAR) and adoption of chapter 11-280.1, HAR, entitled "Underground Storage Tanks." This action was presented for your consideration at your April 18, 2018 meeting and the Board approved the proposed regulations to continue to public hearing in a letter dated April 19, 2018. Thank you for your prompt action.

While the proposed repeal and adoption involves many changes, the majority are mandated by federal regulations for the EPA-approved state Underground Storage Tank (UST) program to retain its program approval. The Department of Health determined there is only one state-initiated change that will affect small businesses (as defined in §201M-1, Hawaii Revised Statutes), which the Pre-Hearing Small Business Impact Statement described in detail.

During the public hearing and public comment period, no comments were received from small businesses or concerning the impact of the proposed rule changes on small businesses.

Please call our rule drafter, Noa Klein, at 586-4238 or Deputy Attorney General Wade Hargrove at 586-4070 if you need more information.

Thank you,

Lene Ichinotsubo
Acting Chief, Solid & Hazardous Waste Branch

Attachments:
Post-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapter 281 and Adoption of Hawaii Administrative Rules, Title 11, Chapter 280.1 Regarding Underground Storage Tanks (USTs)
Response to comments: Proposed repeal of Hawaii Administrative Rules chapter 11-281 and adoption of chapter 11-280.1

Post-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapter 281 and Adoption of Hawaii Administrative Rules, Title 11, Chapter 280.1 Regarding Underground Storage Tanks (USTs)

Background
Hawaii is an approved state for the U.S. Environmental Protection Agency (EPA)'s national underground storage tank (UST) program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle I. In order to maintain approval and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 281 (40 CFR 281) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR 280, by October 13, 2018. The new (2015) federal rules improve environmental protection by increasing emphasis on properly operating and maintaining equipment. The lack of proper operation and maintenance of UST systems has been found to be one of the main causes of release of regulated substances to the environment. New requirements such as regular release detection equipment testing, walkthrough inspections, and proper operation and maintenance are key for preventing and quickly identifying releases.

The Department of Health (department) is proposing to repeal chapter 11-281, Hawaii Administrative Rules (HAR) and adopt chapter 11-280.1, HAR. This proposed rulemaking action involves numerous changes to the regulations. Most of the proposed changes are federal changes and are required for the continued EPA approval of the State UST program. For these federally-mandated changes, the department has no discretion to consider less restrictive alternatives. Therefore, the requirements of chapter 201M, Hawaii Revised Statutes do not apply to these changes. This small business impact statement focuses only on state-initiated changes that are not federally required.

The proposed state-initiated change affecting small businesses (as "affects small business" is defined in §201M-1) is:
Require secondary containment for petroleum underground storage tanks (USTs) and piping installed before August 9, 2013, except for airport hydrant systems and UST systems with field-constructed tanks. (Secondary containment is already required for tanks and piping installed on or after August 9, 2013.) This requirement is proposed to become effective ten years after the effective date of the new rules.

The existing requirement is in §11-281-17, Hawaii Administrative Rules (HAR) and will be moved to §11-280.1-20(g)(1). The new requirement will be in §11-280.1-21(b), HAR.

How opinions or comments from affected small business were solicited
Comments and questions were solicited through a series of informational meetings conducted in Hilo, Kailua-Kona, Honolulu, Kapolei, Kahului, and Lihue between January 17 and February 1, 2018. Approximated 230 people attended these meetings. Notice of these meetings was sent to owners/operators or designated contacts for all UST sites within the state and other interested parties on or around December 20, 2017 via e-mail, if available, or postal mail.

A public hearing was held by the department on May 31, 2018. All small businesses were invited to submit oral comments at the public hearing and/or written comments by June 5, 2018. Notice of the hearing was published in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on April 30, 2018 and in The

Environmental Notice on May 8, 2018. Notice was sent to owners/operators or designated contacts for all UST sites within the state and other interested parties on or around April 30, 2018 via e-mail, if available, or postal mail.

Summary of public comments, small business comments, and the department's response to comments

Fifty-nine (59) people attended the public hearing. Fourteen (14) people testified at the hearing and one hundred twenty-four (124) people submitted written comments, including one hundred fourteen (114) similar petition-style e-mail comments.

No comments were received from small businesses or concerning the impact of the proposed rule changes on small businesses. A summary of the public comments and the department's responses are provided in the attachment "Response to Comments."

Response to comments
Hawaii Department of Health
Proposed repeal of Hawaii Administrative Rules chapter 11-281 and adoption of chapter 11-280.1

Notes:
Comments have been summarized. All written comments received and the transcript of the public hearing held on May 31, 2018 are available at http://health.hawaii.gov/shwb/ust-har/.

All section and subchapter numbers refer to the proposed chapter 11-280.1, Hawaii Administrative Rules (HAR), unless otherwise noted.

Commenter: Holly Dagostino, Par Petroleum

Comment #1: §70(b)(3) does not say exactly the same thing as §34(b)(4), so this makes it unclear what triggers the requirement to submit a notification of temporary closure (60 days or 90 days of closure) and when that notification is due.

Response: Thank you for pointing out this inconsistency. This has been corrected by removing §70(b)(3) and rewording §34(b)(4) to clarify the intent that notification be provided to the department within thirty days of the UST system having met the definition of temporary closure. Please note that the definition of temporary closure has been changed (see response to comment #8).

Comment #2: §34(d)(5) cross reference to §35(c) is incorrect.

Response: Thank you. This reference has been corrected to §35(b).

Comment #3: §32(c) cross reference to §34(b) is incorrect.

Response: Thank you. This reference has been corrected to §34(d).

Comment #4: The current regulation does not distinguish between "dispensers" and "dispenser systems." It requires UDCs [under-dispenser containment] and UDC sensors for any "dispenser" installed after 8/9/13. This is slightly different than the new requirement in §21(c), which requires UDCs and UDC sensors only for "dispenser systems" installed after 8/9/13. Am I misinterpreting it?

§11-281-03 (current):

> "Dispenser" means equipment that is used to transfer a regulated substance from underground piping, through a rigid or flexible hose or piping located aboveground, to a point of use outside of the underground storage tank system such as a motor vehicle.

§12 (proposed):

> "Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.
>
> "Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

Response: The definition of "dispenser" in §11-281-03 is consistent with the definition of "dispenser system" proposed in §12. Therefore, there is no practical change to the requirement for under-dispenser containment located in §11-281-19 and §25(a) and (c) [moved from proposed §21(c)(1) and (3)]. The new definitions distinguishing between dispenser and dispenser system are consistent with definitions in the federal UST regulations. This distinction is necessary because pursuant to §25, replacement of only the dispenser (aboveground dispensing equipment) does not trigger the requirement for under-dispenser containment, while replacement of the dispenser system does.

Commenter: Par Petroleum

Comment #5: In order to comply with the requirements of the currently effective regulation, HAR §11-281-19, UST owners/operators who replaced dispensers after 8/9/13 have installed "stand-alone" liquid sensors in UDC sumps. Stand-alone sensors immediately shut down AC power to the dispenser when fluid is detected in the dispenser pan.

The draft §37(a)(3), requires UST owners/operators to "generate a record of the status of the under-dispenser containment and the sensor's proper operation at least every thirty days." For owners who utilize stand-alone sensors, it is not possible to generate a record of the dispenser sensor status because the sensors are not connected to the tank monitoring system console. To re-wire an existing UST system to connect the UDC sensors to the console is impractical and would require significant and costly construction and electrical work at the facility.

Due to the considerations mentioned above, Par requests that the Department consider revising or removing the requirement in §37(a)(3).

Response: Thank you for pointing this out. The department has decided not to impose the requirement to generate a record of status or proper operation, deleting §37(a)(3) and allowing "stand-alone" sensors in UDCs. We have added text to §37(b) indicating that *if* the sensors are connected to record-producing equipment (i.e., the tank monitoring system console), the

records produced must be kept for three years. We encourage sites with new UST system installations to wire UDC sensors to the tank monitoring system console.

Comment #6: Draft §35(a)(2)(B) describes integrity testing that will be required for containment sumps that are used for interstitial monitoring of piping. Acceptable methods of integrity testing are included in §35(a)(1)(B)(i) to (iii), and the accepted code of practice, Petroleum Equipment Institute (PEI) Publication RP1200, is referenced in §38(f). The hydrostatic test procedure in PEI RP1200 specifies that the sump shall be filled with water to 4 inches above the highest penetration.

Petroleum Marketers Association of America (PMAA) has developed guidance on a low-liquid level test which has been endorsed by EPA and has been accepted in other states. The PMAA guidance specifies that an automatic shut-off sensor shall be used in conjunction with the low-liquid test. The test procedure requires the sump to be filled only to the point of the sensor activation. In addition to being equally as protective of the environment as the high-liquid level test, there are several benefits of low-liquid testing, including the production of less waste water compared with PEI RP1200.

Par requests that the Department consider approving an alternate method of sump integrity testing, specifically a low-liquid level test.

Response: The department appreciates the time and effort taken by the commenter to explain the details of this request. The department is considering the request, but staff with the appropriate expertise need time to complete additional research and the department is not able to make a positive determination by the deadline for completion of this response to comments. This request to approve an alternative method to meet the requirements of §35(a)(2)(B) using §35(a)(1)(B)(iii) does not impact the regulations themselves, so the department's response is not included in this document. The department will respond directly to the requester and post its determination on the UST program's website (http://health.hawaii.gov/shwb/underground-storage-tanks/) as soon as possible.

Commenter: Sierra Club members [copies or variations of the comment below were submitted by 114 individuals during the public comment period using a petition-style e-mail form letter from everyaction.com]

Comment #7: As a concerned resident that depends on Hawai'i's groundwater aquifers as my primary source of drinking water, I strongly urge the Department of Health to take the needed steps through this rulemaking process to protect Hawai'i's water from contamination. The Health Department should shorten the time frame—from 20 years to 10 years—for bringing field-constructed underground storage tanks into compliance with state regulations on underground storage tanks.

My concerns arise primarily from field-constructed underground storage tank facilities, such as the U.S. Navy's Red Hill Bulk Fuel Storage Facility, that has a long history of leaking fuel into the environment and sits directly above Oʻahu's primary drinking aquifer. The Red Hill facility is not alone, there are a handful of other field-constructed tank facilities that also continue to pose a threat to our environment. The people of Hawaiʻi cannot wait another 20 years for critical upgrades and leak prevention and detection systems to be installed to these facilities.

Response: This comment appears to be based on the misperception that the field-constructed tanks at Red Hill are entirely unregulated, do not meet performance standards that apply to all USTs, and have no release detection systems in place. This is not the case. The tanks are currently subject to §§11-281-12 and 11-281-13 and subchapters 6, 7, and 8 of chapter 11-281, Hawaii Administrative Rules, and the tanks currently meet performance standards for corrosion protection and use a release detection method that is consistent with both the federal and state rules. Red Hill has, and has always had, corrosion protection as that concept is defined in both the federal and state rules because the steel tanks are encased in concrete and are not in contact with the corrosion-causing soil. Additionally, Red Hill utilizes a system of release detection whereby the volume of stored fuel is routinely measured and inventory is statistically reconciled to detect a possible release. The proposed rules are designed to enhance the performance and protective measures already in place at Red Hill.

Field-constructed tanks installed before the effective date of the new regulations (including the USTs at the Red Hill Bulk Fuel Storage Facility) are subject to the following requirements which must be implemented in accordance with the following schedule:

[Space intentionally left blank.]

Table 1

Applicable immediately on effective date of new rules:	Applicable one year after effective date of new rules:	Applicable twenty years after effective date of new rules:
• Under-dispenser containment for new dispenser systems [§25] • General operating requirements [subchapter 3] Requirements substantially similar to requirements already applicable: • Corrosion protection for tanks and piping [§21(a)(2)(A), §20(b) and (c); current §§11-281-12 and 11-281-13] • Release reporting, investigation, and confirmation [subchapter 5; current chapter 11-281 subchapter 6] • Release response action [subchapter 6; current chapter 11-281 subchapter 7] • Closure [subchapter 7; current chapter 11-281 subchapter 8]	• Spill and overfill requirements [§§21(a)(2)(B), 20(d)] • Release detection [subchapter 4] • Financial responsibility [subchapter 8] • Operator training [subchapter 10] • Permits [subchapter 12]	• Secondary containment or alternative tank and piping design [§21(c); moved from proposed §21(d)(2)(B)]

As you can see from the table above, the vast majority of the new requirements will be effective immediately or within one year. Some of these "new" requirements are, in fact, already in place by virtue of being equivalent to provisions found in our existing chapter 11-281, HAR. For the requirements that will apply one year from the effective date of the new rules, this one year delay serves the purpose of allowing the time necessary to complete tasks required to enable these requirements to be implemented. These tasks include but are not limited to:

- Procurement and installation of spill and overfill equipment
- Procurement and installation of release detection equipment
- Setting up financial assurance mechanisms
- Design of appropriate curricula by operator training providers
- Submission of permit applications and departmental review of applications

For those requirements with a one year delay, this is an accelerated deadline for compliance as compared to the federal rules, which afford owners and operators of existing field-constructed tanks three years after the effective date to come into compliance. Note that with respect to financial responsibility, §90(b) exempts the federal and state governments from the requirement to provide a financial assurance mechanism such as insurance or a surety bond. Other types of owners and operators must comply with subchapter 8.

Installation of secondary containment or alternative tank and piping designs [§21(c); moved from proposed §21(d)(2)(B)] is the only new requirement for existing field-constructed tanks (e.g., Red Hill) that becomes applicable twenty years after the effective date of the new rules. And, for context, it should be understood that there is no corresponding federal requirement to upgrade field-constructed tanks in this way.

While the department understands the public's desire to require immediate secondary containment or alternative design retrofits for existing field-constructed tanks, there is no current technology or existing industry standard for designing and constructing such retrofits for large field-constructed tanks. In 2015, the Navy entered into a comprehensive, enforceable agreement with the department and the EPA known as the AOC (Administrative Order on Consent; department docket number 15-UST-EA-01). The AOC requires either completed upgrades or closure of all existing Red Hill tanks by 2037 and requires re-evaluation of tank upgrade technologies on a periodic basis throughout its duration.

Based upon the information available to the department at the time, the deadlines memorialized in the AOC were appropriate and based upon reasonable estimates of the time necessary to design, construct, engage pilot projects, and procure federal funds related to upgrading Red Hill. Nothing DOH has learned about the logistics of design and construction at Red Hill during the time spent working to implement the AOC since 2015 suggests that 20 years is unreasonable. To the contrary, the well-documented difficulties of working in the conditions present at Red Hill makes the original schedule for upgrading the Red Hill tanks appear relatively aggressive in light of the physical constraints. Consequently, the new rules purposely adopt this same AOC schedule for upgrading the design of existing field-constructed tanks.

Furthermore, adopting regulations that conflict with the AOC timeline could potentially derail the tank upgrade alternative decision-making process currently underway and interfere with the department and EPA's oversight of the Navy's research and decision-making processes by encouraging the Navy to utilize federal law to exempt itself from state regulation altogether (see response to comment #38). The department is committed to adopting a regulatory approach with respect to field-constructed tanks (e.g., Red Hill) that remains consistent with its responsibility to protect human health and the environment but stops short of unreasonably and unjustifiably interfering with the Navy's ability to operate its facility in the interests of our national defense. The proposed rules do this by encouraging the Navy to continue to cooperate with state government and EPA, through the AOC, on the development and implementation of improvements to Red Hill that are site-specific and appropriately customized in a way that the rules alone cannot be.

The AOC has been instrumental in compelling the Navy to improve operations and fuel monitoring at the Red Hill facility and evaluate and improve overall design and operational strategy above and beyond any current or proposed regulatory requirement. This comprehensive evaluation of the Red Hill facility not only includes the upgrade design of the tanks, but also associated release detection methods, operation controls, response actions, and appropriate redundancies.

Ensuring the Navy's compliance with both the AOC and the proposed rules provides the best protection of the state's drinking water resources at Red Hill. The department expects many of the Red Hill tanks to meet the requirements of §21(c) [moved from proposed §21(d)(2)(B)] well before the deadline of twenty years after the effective date of the new rules, but believes that twenty years is a reasonable timeline for upgrades to *all* of the tanks to be completed.

Information about the AOC and the department's efforts related to Red Hill is available here: http://health.hawaii.gov/shwb/ust-red-hill-project-main/

Commenter: United States Department of the Navy

Comment #8: Thorough inspection, repair, and maintenance form an important part of the DOH and EPA approved Tank Inspection, Repair, and Maintenance (TIRM) program submitted to regulators by the Navy and Defense Logistics Agency (DLA) [under the Red Hill AOC]. Each scheduled "clean, inspect, and repair" cycle of a tank requires several years to implement. We respectfully request clarification of how §70 functions with respect to the approved TIRM process. We further suggest revising the definition at §12:

> "Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer and the removal of fuel is not a part of a repair or maintenance effort.

Response: The department's concept of temporary closure includes all reasons that a tank is not being used in accordance with its normal operational parameters, including but not limited to when tank is taken out of service for maintenance or repair. The temporarily closed status of a tank does not, as a practical matter, impose any additional requirements or obligations, except the notification requirements in §34(a)(2). If a tank is taken out of service because it stops meeting applicable design, construction, and installation requirements in subchapter 2 or when the tank does not yet meet new requirements that begin to apply, the tank must meet the applicable requirements within one year, be permanently closed, or receive an extension of the twelve-month temporary closure period.

In discussing the question of how owners and operators of tanks that are temporarily closed may be affected by the specific wording of the definition of "temporary closure," it has come to

the department's attention that the sixty-day time frame may have unintended consequences for owners and operators of field-constructed tanks and tanks storing fuel for use by emergency generators. Most USTs store fuel for frequent dispensing, such as at a corner gas station. However, field-constructed tanks and emergency generator tanks are intended to store fuel for infrequent use and, in normal operation, may not receive or dispense fuel for a long period of time. The department had originally proposed to define temporary closure as that moment in time when a tank had neither dispensed nor received fuel for a period of fifteen days or more, but received comments during informational meetings during the drafting process that suggested that this time period was too short to reflect operational needs in the case of emergency generators. The public hearing draft's sixty days, upon additional review of the operational needs of owners and operators of both emergency generator and field-constructed tanks, appears also to be too short, again, because these tanks are used for relatively long-term fuel storage. Therefore, the department has decided to amend the proposed definition to better account for the differing operational parameters of different types of USTs under their normal operating conditions, as follows:

> "Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer[~~.~~], except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

Comment #9: We respectfully support the intent of these proposed rules, but can only do so if the proposed rules do not conflict with an existing legally enforceable settlement and upgrade plan, the 2015 Red Hill Administrative Order on Consent (AOC) signed with the State Department of Health (DOH) and the U.S. Environmental Protection Agency (EPA). The AOC imposed wide ranging requirements on the Navy and Defense Logistics Agency with detailed deliverables and deadlines. The AOC requires evaluation and action in seven areas: Tank inspection, repair and maintenance; Tank upgrade alternatives; Release detection and tank tightness testing; Corrosion and metal fatigue practices; Investigation and remediation of releases; Groundwater protection and evaluation; and a Risk and vulnerability assessment.

[The commenter provided additional information about the ongoing work at the Red Hill Bulk Fuel Storage Facility under and the AOC, an analysis of how the terms of the AOC in the seven areas listed above are consistent with and go beyond the requirements in the proposed rules, and comments on the strategic importance of the Red Hill facility for the US Pacific Command. The full comment can be found in the written comments PDF.]

Response: These comments do not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Comment #10: Applicability of metal tanks and piping encased or surrounded by concrete: The preamble of 40 CFR 280 includes the following statement: "Metal tanks and piping which are encased or surrounded by concrete have no metal in contact with the ground and are not subject to the corrosion protection requirements." The Navy recommends similar language be added to §10, Applicability.

Response: A metal tank encased by concrete would meet the corrosion protection performance standards under §20(b)(3), i.e., the tank does not need corrosion protection because it is clad or jacketed with a non-corrodible material. Piping encased in concrete is not in contact with the ground, so §20(c) would not apply based on the language in the introductory paragraph of §20(c). For context, §31 ("Operation and maintenance of corrosion protection") makes it clear that corrosion protection systems are in place only where metal is in contact with the ground:

> All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

The commenter's proposed language is not necessary and would be out of place in §10, given the existing structure of the applicability section.

Comment #11: Release detection for UST systems that store fuel solely for use by emergency power generators: These UST systems installed before August 9, 2013 will be required to have release detection within one year after the effective date of the new state UST rules.

The Navy plans to replace these emergency generator USTs with tanks that comply with the new rules. One year may not be enough time for the existing emergency generator USTs to be replaced. The Navy recommends DOH allow at least two years after the effective date of the new state UST rules for existing emergency generator USTs to have release detection.

Response: The department's records indicate that of the 246 USTs statewide storing fuel solely for use by emergency generators that were installed before August 9, 2013, only 8 tanks are lacking release detection equipment. The Navy does operate several emergency generator tanks, but the department's records indicate that all but one of these tanks already have release detection equipment installed that will meet the requirements in subchapter 4. One year is sufficient time to install release detection equipment on this existing tank, or to replace the tank if the Navy chooses to do so.

The three-year phase-in in the federal rules is a maximum allowable time limit for states with approved programs (i.e., three years from the effective date of the state's rules; see 40 CFR §281.33(b)(2)). The current state rules (chapter 11-281, HAR) implemented the requirement for newly installed UST systems storing fuel for use by emergency generators to have release detection on August 9, 2013, before the federal regulations (October 13, 2015). As in the case of

the installation cut-off date for this requirement, the state is choosing to adopt rules more stringent than the federal regulations in order to be more environmentally protective.

Commenter: City and County of Honolulu, Department of Environmental Services, Division of Wastewater Treatment & Disposal

Comment #12: For spill prevention equipment testing, the DOH requirement is every 365 days while the EPA requirement is every 3 years beginning no later than 3 years after the effective date of the regulation. We agree with the basis of the EPA requirement that the 3-year testing frequency (along with periodic walkthrough inspections) is adequate to ensure that spill prevention equipment will contain any drips or spills during fuel delivery. Also, we agree with EPA's alignment of periodic spill, overfill, and containment sump testing [every three years, beginning no later than 3 years after the effective date] as it will be easier to comply with the requirements. We therefore suggest adoption of the EPA requirement.

Response: The requirement for annual tightness testing of spill prevention equipment became effective on August 9, 2013 [§11-281-41(c)(2)] and the proposed change §35(a)(1) adds the alternative to monitor double-walled spill prevention equipment every thirty-one days. Since this requirement is already in effect and the department has received no comments indicating that the annual testing is problematic, we will retain this requirement that is more stringent than the federal regulations. While spill prevention equipment testing must be completed more frequently than the new containment sump testing and overfill prevention equipment inspection requirements [§35(a)(2) and (3)], it can easily be aligned with other annual requirements, such as the annual walkthrough inspection.

Comment#13: For release detection, the DOH requirement for emergency generator tanks is to meet the requirement no later than 1 year after the effective date while the EPA requirement is to meet the requirement no later than 3 years after the effective date.

On the release detection equipment operability testing, both DOH and EPA have the same requirement for annual testing frequency, but the DOH requires testing to begin 1 year after the effective date while EPA requires testing to begin 3 years after the effective date. We suggest adoption of the EPA requirements.

Response: The Division of Wastewater Treatment & Disposal (WTD) does operate many emergency generator tanks, but department staff confirmed with WTD staff that all of these tanks already have release detection equipment installed that will meet the requirements in subchapter 4. See response to comment #11.

Comment #14: DOH requires USTs installed prior to 8/9/13 to be provided with secondary containment not later than 10 years after the effective date of the new rules while EPA requires new and replaced tanks (after 4/11/16) to be provided with secondary containment. [Note: This commenter is discussing USTs other than field-constructed tanks and those associated with

airport hydrant systems.] DOH cites EPA's data showing higher number of releases from single walled tanks and piping compared with secondarily contained systems as among the bases for proposing to require secondary containment covering existing USTs. EPA has also considered this data but notes that retrofitting single walled tanks with secondary containment would be a significant financial burden for owners and operators. It is expected that single walled tanks will be replaced as they age and when replaced they must be secondarily contained. We suggest adoption of the EPA secondary containment requirements.

Response: The department already requires secondary containment for tanks and piping, for UST systems other than airport hydrant systems and UST systems with field-constructed tanks, installed on or after August 9, 2013 [§11-281-17(a)]. The new requirement is to provide secondary containment for tanks installed before August 9, 2013, for UST systems other than airport hydrant systems and UST systems with field-constructed tanks [§21(b), moved from proposed §21(d)(1)(B)]. By the time this requirement is in effect, all single walled USTs operating within the state will be over 30 years old, and most will be 40 or more years old. Because it is possible to purchase a pre-fabricated replacement tank designed with secondary containment for a typical UST with fuel capacity of 10,000 gallons or less, and these products are readily available, the only reason not to replace single-walled tanks "as they age" is the financial burden this replacement poses. Requiring timely upgrade of these older tanks, where replacement tanks are readily available and can be purchased "off the shelf," is reasonable in spite of the financial burden because the ten-year phase-in provides owners and operators the time necessary to plan for this expense. The department conducted an analysis of the impact of this requirement on small businesses, as defined in §201M-1, Hawaii Revised Statutes (HRS), and prepared a Pre-Public Hearing Small Business Impact Statement (available here: http://health.hawaii.gov/shwb/ust-har/). The Small Business Regulatory Review Board reviewed the proposed rules and Small Business Impact Statement and approved the proposed rules to continue for public hearing. The department has not received any comments indicating that the requirement to provide secondary containment for USTs other than field-constructed tanks and USTs associated with airport hydrant systems imposes too great a burden on small businesses.

Comment #15: DOH requires piping installed before 8/9/13 must be provided with secondary containment not later than 10 years after the effective date of the new rules while EPA requires secondary containment for the entire piping run when 50 percent or more of a piping run is replaced. Based on EPA study, replacement cost of an entire piping run is equal to repair cost when approximately 60% of a piping run is repaired, hence its requirement for the entire piping run to be secondarily contained is when 50% or more of a piping run is replaced. We suggest adoption of the EPA secondary containment requirements.

Response: The department already requires secondary containment for piping, for UST systems other than airport hydrant systems and UST systems with field-constructed tanks, installed on or after August 9, 2013 [§11-281-17(e)]. The proposed new requirement is to provide secondary containment for piping installed before August 9, 2013, for UST systems other than airport hydrant systems and UST systems with field-constructed tanks [§21(b), moved from proposed §21(d)(1)(B)]. The intent of this requirement is to require upgrade of all single-walled piping by

ten years after the effective date of the rules. Practically speaking, this is likely to be accomplished by replacing old piping with new secondarily contained piping. The EPA definition of replacement is difficult to measure and enforce in the field and allows replacement of a substantial portion (<50%) of the piping run with new single-walled piping. The existing, more stringent state rules are intended to encourage owners and operators of UST systems to replace the entire piping run with double-walled piping when replacement of any segment of the run is necessary. The department has not received any comments indicating that replacement of piping with new, double-walled piping for the entire piping run within ten years poses an undue financial burden.

Comment #16: For monthly and annual walkthrough inspections, DOH requires the inspections to begin not later than 1 year after the effective date while EPA requires the inspections to begin no later than 3 years after the effective date. Based on comments received, EPA made the requirement for the inspections to begin no later than 3 years after the effective date, to align all operation and maintenance requirements. As mentioned above, this will make compliance easier and also provide enough time to know the tasks involved. We therefore suggest your adoption of the EPA regulation requiring walkthrough inspections to begin no later than 3 years after the effective date.

Response: The department received comments during the informational meetings held in January and February 2018 asking for more than one month from the effective date of the rules to complete the first monthly walkthrough inspection, and as a result changed the effective date of this requirement to one year after the effective date of the proposed rules. The department believes that one year is sufficient preparation time for owners and operators to create an inspection checklist and train staff in the new requirements. There are many existing operation and maintenance requirements that occur on an annual basis, including testing of spill prevention equipment and release detection equipment. The annual walkthrough inspection can be scheduled in alignment with other annual requirements.

Comment #17: DOH requires Class A & B operators designated on or after effective date of new rules to meet the revised training requirements within 30 days of assuming duties; Class C operators designated after the effective date to be trained before assuming duties. DOH also needs time to re-evaluate all training programs to ensure that they conform with the new requirements. On the other hand, EPA requires compliance with training requirements 3 years after the effective date. Considering the need for revision of training programs by training providers and re-evaluation of the programs by DOH, more time should be allowed for completion of operators training after the effective date. We therefore suggest that DOH adopt the EPA requirement for operators' training to meet revised requirements to begin 3 years after the effective date.

Response: Operator training is new in the October 13, 2015 federal regulations, but was already implemented in state rules on August 9, 2013 [§11-281-46]. The three-year phase-in in the federal rules is for the operator training program in its entirety, and so does not make sense for the state rules. Since training is already required and the requirements already in place are very

similar to the new requirements based on the federal rules, the department seeks to ensure a smooth and quick transition to the new operator training standards. There are no changes to the training requirements for Class C Operators, so currently approved programs will remain approved when the new rules become effective. Providers of training have been given notice of the upcoming changes to the regulations since December 20, 2017 and have already submitted their revised Class A and B Operator training materials to the department. The department will complete its review and approval of eligible training programs prior to the effective date of the new rules, so Operators who need to receive training immediately following the effective date should not encounter difficultly finding approved training programs. In addition, operator training completed before the effective date of the new regulations will be honored by the department until the operator's next required training renewal (one year for Class C Operators, five years for Class A and Class B Operators).

Commenter: Liz Bogdanski

Comment #18: Each of the requirements for the release detection testing and the walkthrough inspections are different, i.e. monthly, thirty days, 31 days. This generates possible confusion and should be changed to 31 days for consistency and to clarify the intent of the regulations.

Response: The intent of all requirements to complete a task every 30 or 31 days is that the task (i.e. walkthrough inspection) be completed on a regular basis, at least once a month. EPA chose to specify every 30 days to make it clear that walkthrough inspections must be scheduled at regular intervals, not simply at any time during each month (i.e., January 31, February 1, March 31, April 1 is not an acceptable monthly inspection schedule). In response to comments received during the informational meetings held in January and February 2018, the department changed the new requirement for monthly walkthrough inspections from "at a minimum…every thirty days" to "…every thirty-one days." This will allow facilities to schedule inspections on the same date each calendar month and remain in compliance.

Since the same logic also applies to release detection requirements that must be completed at least every 30 days, the department is making the suggested change to 31 days. The department received approval from EPA to change all instances of 30 days to 31 days in the state rules to clarify the intent explained above; EPA considers this wording to be as stringent as the federal rules. "Monthly" and "at least every 31 days" are treated as interchangeable; the term monthly is used when naming a requirement that must be completed at least every 31 days (i.e., "monthly walkthrough inspection").

Commenter: Department of Transportation Harbors Division

Comment #19: Can the requirements for release detection be changed to once a month or every 31 days to be consistent with the monthly walkthrough inspection? Under the requirement to read the tank monitoring system console at least every 30 days it is hard to

provide training guidelines to ensure it is done this often, unless we require it to be done twice a month.

Response: See the response to comment #18.

Commenter: Honolulu Board of Water Supply

Comment #20: The proposed rules deviate from the organizational structure of the 2015 EPA UST rule revisions. Existing federal UST rules generally aggregate the requirements for the previously deferred USTs into a single location: Subpart K-UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems. The proposed rules, in contrast, have removed subchapter 11 contained in the draft rules dated December 20, 2017, which had mirrored federal Subpart K, and appear to have dispersed those requirements throughout other subchapters.

Previously deferred facilities with field-constructed tanks greater than 50,000 gallons comprise a considerable risk to Hawaii's drinking water resources. As such, it is critical that every regulatory requirement for field-constructed tanks be provided in a clear, unambiguous, and concise manner. Owners and operators of field-constructed UST systems should be able to find all the provisions for these important installations in one location in the new state rules. The BWS has found the newest version of the proposed chapter, which relies on multiple exemptions and cross-references to other regulatory provisions to establish the requirements for these types of facilities, to be cumbersome and confusing.

As currently written, the proposed rules also make it difficult to compare requirements for previously deferred tanks to the current federal rules. DOH should provide a crosswalk table that cross-references all the proposed rule provisions to their federal counterparts and identify all new proposed rule provisions that do not appear in the federal rules. Such a table would be useful for determining whether the proposed rules are at least as stringent as federal UST regulations in 40 CFR Part 280.

Response: [References to field-constructed tanks alone should be understood to refer also to airport hydrant systems because they are regulated in the same manner; these two UST system types are what the commenter refers to as “previously deferred USTs.”] We strongly disagree with the characterization of the reorganization of proposed chapter 11-280.1 as “relying on multiple exemptions and cross-references.” The chapter was reorganized specifically to make clear which regulations are applicable to field-constructed tanks and to reduce the voluminous cross-references in the federal rules as much as practicable. While some cross-references remain, we are confident that the overall effect of the reorganization is to improve the readability of the proposed chapter as a whole, relative to the federal source material, and to make it easier to find the specific requirements for UST systems with field-constructed tanks by searching the correct subject matter section. The content of what was subchapter 11 in the December 2017 draft of the proposed rules (corresponding to 40 CFR part 280 subpart K) has

been redistributed throughout the proposed chapter 11-280.1 in the appropriately titled section based on subject matter, as noted in the document titled "Proposed chapter 11-280.1, HAR – Explanation of changes made from December 2017 draft to public hearing draft" and shared with the public on May 18, 2018. The following table shows where provisions from the federal 40 CFR part 280 subpart K are located in the proposed state rules.

Table 2

Federal citation 40 CFR §280.___	**State citation §11-280.1-___, HAR**
250	12
251(a) to (c)	10(a)(1)(A)
251(d)	26(g) [moved from proposed 25(g)] Note: This is not a requirement, but a code of practice that can be used to meet performance standards in §20.
252(a)	20(g)(2)(B) and (C) and 21(c)(2) and (3) [moved from proposed 21(d)(2)(A)(ii) and (iii), 21(d)(2)(B)(ii) and (iii)]
252(b)(1)	21(a)(2)(A) [moved from proposed 21(b)(2)(A)] Note: Field-constructed tanks are required to meet the standards in §20(b) and (c), so the alternatives provided in §280.252(b)(1)(ii) do not appear.
252(b)(2)	21(a)(2)(B) [moved from proposed 21(b)(2)(B)]
252(c)	36(a)(4)
252(d)(1) introductory paragraph	41(a)(2) and (3)
252(d)(1)(i) to (vi)	43(10)(A) to (F)
252(d)(2) introductory paragraph	41(b)(4) and (5)
252(d)(2)(i) to (iv)	44(4)(A) to (D)
252(d)(3)	45
252(e)	73(b)

While it might appear convenient at first glance that requirements for UST systems with field-constructed tanks are located in one place [40 CFR part 280 subpart K], in actuality, the federal rules require far more cross-referencing than the state rules because subpart K relies on other sections for many of the substantive requirements. In the federal rules [40 CFR part 280], in order to follow a requirement for a field-constructed UST you must start by pairing §280.10 and §280.251, then go back to the rest of the chapter, keeping in mind the caveats contained in §280.252.

In contrast to the way subpart K of the federal rules forces you to jump back to previous sections in different subparts to find the relevant material, in the proposed state rules, you turn

directly to the appropriate subject area to read how the requirements of that section apply specifically to field-constructed tanks. The effective dates covered in federal §280.251 are addressed in state §10 and the differences covered in federal §280.252 have been moved to the appropriate places throughout the state chapter. This new organization makes it clearer that the entire chapter 11-280.1, HAR, applies to field-constructed tanks and keeps all information about a particular topic together in one place.

While the department acknowledges that the different organizational structure of the federal and proposed state rules may make it somewhat more difficult to do a comparison between the two, this comparison has been done by the department and by EPA staff to ensure that the proposed state rules are at least as stringent as the federal rules, which is a requirement of state program approval under 40 CFR part 281. Table 2 should assist those interested in comparing the provisions relating specifically to field-constructed tanks in the federal and proposed state rules.

More importantly, it is far more critical to the effectiveness of these proposed rules that they be easier to use, implement, and enforce than that they be easily compared to their source material. We are confident that owners and operators, the department, and the public will find the new organizational structure of the prosed rules far more user-friendly and easily understood than the federal rules. For example, if you want to know the release detection requirements for field-constructed tanks storing over 50,000 gallons of petroleum, in the proposed state rules you need only look in subchapter 4 and particularly at §41(a), where the release detection requirements for *all* petroleum USTs are located. In contrast, the federal rules require you to read and understand how to combine 40 CFR §280.41(a) and §280.252(d)(1) to get the same information. The specifications for allowed release detection methods are in §43 in the proposed state rules. In the federal rules, they are located in both §280.43 and §280.252(d)(1).

The following table allows for a direct comparison of the release detection requirements for field-constructed tanks with capacities greater than 50,000 and installed before the effective date of the state rules, or federal installation cut-off date, as applicable.

[Space intentionally left blank.]

Table 3

State	Federal
§41(a)(3) UST systems with field-constructed tanks with a capacity greater than 50,000 gallons: (A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10)	§252(d)(1): ...Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in subpart D (except § 280.43(e) and (f) must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:.[252(d)(1)(i) to (vi)] [in subpart D] §41(a)(1): Tanks installed on or before April 11, 2016 must be monitored for releases at least every 30 days using one of the methods listed in § 280.43(d) through (i) except that: (i) UST systems that meet the performance standards in §280.20 or §280.21, and the monthly inventory control requirements in § 280.43(a) or (b), may use tank tightness testing (conducted in accordance with §280.43(c)) at least every 5 years until 10 years after the tank was installed; and (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in § 280.43(b) may use manual tank gauging (conducted in accordance with § 280.43(b)).

Comment #21: The proposed rules deviate from certain substantive requirements of the 2015 EPA UST rule revisions. [This comment was embedded in another comment about requirements for field-constructed tanks installed before the effective date of the proposed rules (see comment #20), so the department is understanding it to relate specifically to requirements for those tanks.]

Response: The substantive requirements in the proposed state rules that differ from the federal rules are either more stringent than the federal rules or apply the same requirement on a shorter timeline than the federal rules. The following table shows differences between the state and federal rules for field-constructed tanks installed before the effective date of the rules.

Table 4

State citation §11-280.1, HAR	**Federal**
§21(a)(2)(A) [moved from proposed §21(b)(2)(A)] effective immediately	Effective three years from the effective date of the rules, equivalent standards OR corrosion protection upgrade alternatives provided in §280.252(b)(1)(ii)
§21(a)(2)(B) [moved from proposed §21(b)(2)(B)] effective one year from effective date of the rules	Effective three years from the effective date of the rules
§21(c) [moved from proposed §21(d)(2)(B)] effective twenty years from the effective date of the rules	There is no federal requirement corresponding to the state requirement for secondary containment or alternative design upgrade
Subchapter 3 effective immediately • §36 effective one year from effective date of the new rules for all tanks	Effective three years from the effective date of the federal rules
§33 Repairs to tanks, piping, secondary containment areas, and spill and overfill prevention equipment must be tested prior to return to use	Repairs must be tested within 30 days
§34(a) Notification of changes in tank information	There is no federal requirement corresponding to the state's notification requirements
§35(a)(1) Spill prevention equipment annual test	Equipment tested every three years
§37 Inspection and maintenance of UDC sensors	There is no federal requirement corresponding to the state's UDC sensor requirements
Subchapter 4 Release detection effective one year from the effective date of the rules	Effective three years from the effective date of the rules
§41(a)(3) Release detection options listed in 40 CFR §280.41(a)(1)(i) and (ii) do not apply to field-constructed tanks over 50,000 gallons (option (ii) would not apply anyway because it is restricted by tank size)	§41(a)(1)(i) and (ii) Release detection options for tanks installed prior to April 11, 2016: (i) Until ten years after tank installation, a tank meeting the performance standards and monthly inventory control requirements may use tank tightness testing every 5 years (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in §280.43(b) may use manual tank gauging
§52(c) Report to department of release investigation that determined no release occurred	There is no federal requirement corresponding to the state's requirement for this report
§§61.1, 65.1, 65.2, 65.3 Release response	There are no federal requirements

action: posting of signs, notification of confirmed releases, quarterly release response reporting, site cleanup criteria	corresponding to the state release response requirements listed
Subchapter 8 Financial responsibility effective one year from the effective date of the rules	Effective three years from the effective date of the rules
Subchapter 10 Operator training effective one year from the effective date of the rules	Effective three years from the effective date of the rules
§244 Re-training of Class A and B Operators every five years, Class C Operators annually	There are no federal requirements corresponding to the state operator re-training requirements
Subchapter 12 Permitting requirements effective one year after the effective date of the rules	There are no federal requirements comparable to the state permitting process. The federal notification requirement (§280.22) is applicable three years from the effective date of the federal rules.

Comment #22: The Board of Water Supply does not support the twenty-year secondary containment deadline for field-constructed USTs set forth in the proposed §21(d)(2)(B). The potential impacts to the groundwater beneath field-constructed USTs, like those at the Red Hill Bulk Fuel Storage Facility, pose an unacceptable risk to our critical drinking water resources. DOH should shorten the twenty-year allowance for upgrading previously deferred systems with secondary containment to ten years.

Response: See response to comment #7.

Comment #23: The proposed §21(d)(2)(B) includes an exemption to the secondary containment requirement at the department's sole discretion, without specifying the requisite level of justification for such a determination. The Board of Water Supply does not believe that a broad exemption to the secondary containment mandate should be included in state UST rules.

In the event any such exemption is to be retained within the regulatory framework, a requirement should be included that the administrative determination be justified with rigorous scientific, engineering, and risk analyses that clearly demonstrate that the alternative design meets or exceeds the performance associated with secondary containment devised and constructed in accordance with these or successor rules. In particular, it should be established that any alternate design results in an equivalent degree of human health and environmental protection and does not present a greater danger to human health or the environment.

Response: This comment is based upon the false premise that there exists a legal requirement that existing field-constructed tanks be retrofitted with secondary containment—there is no such requirement. In the federal UST rules, the only requirement for secondary containment is for new tanks installed after April 11, 2016. In §21(c) [moved from proposed §21(d)(2)(B)], the department is proposing to require tank design upgrades to field-constructed tanks installed

before the effective date of the rules, which may take the form of secondary containment, but this is a requirement which is more stringent than the federal rules. There are no national standards or federal requirements for retrofitting existing field-constructed tanks with secondary containment, internal lining, or tank upgrades other than cathodic protection (which the state already requires).

Broadly speaking, as a design concept, secondary containment is preferable to other potential upgrade designs, and it is defined generally by specifications already included in the rules (§24). For this reason, the department has chosen to include meeting the secondary containment standards in §24 as an option for upgrading field-constructed tanks in §21(c) that does not require specific departmental review. Any upgrade option that is selected for the Red Hill tanks, however, including secondary containment, will be subject to departmental and EPA oversight under the AOC. It is important to remember that §21(c) is not written exclusively for Red Hill and allows an option for upgrades to other field-constructed tanks that does not require extensive departmental involvement so long as the upgrade selected meets the definition of secondary containment in §24.

Secondary containment retrofits have not been done on the scale of the Red Hill tanks, so to require secondary containment as the only upgrade option for field-constructed tanks would have the undesirable regulatory effect of discouraging the development of other technologies and methods. Just as with any other upgrade design, if the Navy chooses secondary containment retrofits for Red Hill, they will actually have to figure out how to design and install a secondary containment retrofit for these tanks. The department is leaving open the possibility for the Navy to engineer an alternative solution—an upgrade design that the department deems adequately protective, or perhaps even superior to applying existing secondary containment technology to very large tanks for which this technology was not designed.

Because there is no standard for a secondary containment retrofit of large field-constructed tanks, nor have the design concepts that may be introduced via the AOC been fully developed, the department does not agree that measuring the “equivalency” of proposed upgrades to secondary containment serves a clear regulatory purpose.

See response to comment #41.

Comment #24: Proposed §21(d)(2)(B) allows the use of single-wall release detection systems for piping associated with field-constructed UST systems that are larger than 50,000 gallons. As with the tanks themselves, this exemption for large UST systems poses an unacceptable risk to drinking water resources as UST system piping is of equal or greater risk for a release. All piping that cannot be visually inspected, including piping in contact with soil or located within concrete cast against soil, should be upgraded with secondary containment on the same schedule required for the field-constructed tanks themselves.

Response: The department has chosen not to require secondary containment and interstitial monitoring for piping associated with field-constructed tanks with a capacity larger than 50,000

gallons, consistent with the federal regulations and EPA's determination that secondary containment and interstitial monitoring are not appropriate for this piping. The department recognizes that airport hydrant systems and UST systems with field-constructed tanks, especially very large volume tanks, present special engineering challenges. Long piping runs and varying piping diameter may in some cases make secondary containment inadvisable and the challenges of tank and piping size, high product throughput, and fluctuating temperature and pressure in piping runs may make conventional release detection methods impractical or impossible. In effect, the department is adopting the EPA's clearly articulated position on the science and engineering related to this issue, which appears to be very well supported by the research available in the federal materials on this subject. [*Federal Register* at 80 FR 41566, pp. 41591-41596; 76 FR 71708 pp. 71715-71716, 71728-71730, 71733-71734]

Comment #25: Proposed §25 provides lists of published codes of practice, conformance with which "may be used to comply with" certain performance standards and requirements of the proposed rules. However, DOH itself has recognized that there is no existing industry standard for designing, constructing, or retrofitting large field-constructed USTs. DOH should provide its justification that the codes of practice referenced in §25(g) are sufficient performance standards under the circumstances present at and on the scale necessary for the RHBFSF [Red Hill Bulk Fuel Storage Facility]; otherwise, this provision should be deleted.

Response: The department has stated that we are unaware of established industry standards specifically for retrofitting existing large field-constructed tanks with secondary containment. The code of practice listed in §26(g) [moved from proposed §25(g)] is taken from the federal rules at 40 CFR §280.251(d) and may be used when designing, constructing, and installing new airport hydrant systems and UST systems with field-constructed tanks. The codes of practice at the end of subchapters 1 to 4 and 7 are not regulatory requirements themselves, but are provided as examples that may be used to meet the applicable requirements, in this case the performance standards in §20. These lists of codes of practice were updated by EPA when the federal UST regulations were revised in 2015, but they are not an exhaustive list of possible codes of practice that can be used to meet applicable requirements.

Comment #26: Given the considerable risk to human health and the environment, DOH should prohibit all requests for variances to allow large field-constructed USTs installed before the effective date of the new rule to remain in a single-walled configuration and operate without secondary containment. The language of proposed DOH rules §332 should be modified as follows:

> Variances allowed. Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter; provided, however, that no variance shall be granted for UST systems with field-constructed tanks with a capacity greater

than 50,000 gallons to operate without secondary containment. No variance may be less stringent than the federal requirements.

Response: This comment again incorrectly assumes that there is a rule requiring secondary containment for all field-constructed tanks larger than 50,000 gallons. There is no such rule (see response to comment #23). In the federal UST rules, there is no requirement for secondary containment of tanks installed before April 11, 2016. In the proposed state rules, there is likewise no requirement for field-constructed tanks installed before the effective date of the rules to have secondary containment. UST system owners/operators would not need to request a variance to do something that is already permitted under state rules.

The department's authority to grant variances, which is derived from chapter 342L, HRS, is designed to enable the department to more effectively regulate USTs. The commenter's proposed modification to §332 limiting the department's regulatory authority would effectively substitute the Board of Water Supply's current preferences for the department's subject matter expertise and discretion. The department is not the object of these regulations, rather it is their enforcer and as such, and as a matter of public policy, will not adopt rules that would restrict the authority granted to it by the legislature. The statutes and rules regarding variances speak to the fact that, in a particular set of circumstances, granting a variance may be in the interest of public health and the environment and the department is the agency best equipped to make that determination. For further discussion on the subject of what a variance is and how it is properly used, see the response to comment #37.

Commenter: Katie Adamson, Aloha Petroleum

Comment #27: §35(a)(2)(B):

> The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

§35(a)(1)(B)(iii):

> Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).

On page 11 of the Summary of Changes and Frequently Asked Questions (December 20, 2017) it states that, "To use option (iii), the department must have pre-approved the specific testing method." On March 19, 2018, Aloha Petroleum submitted an alternative test procedure for containment sump integrity testing to the State of Hawaii, Department of Health (DOH), Solid & Hazardous Waste Branch (Attachment 1). Aloha Petroleum requests approval to utilize low liquid level testing combined with a positive shutdown configuration as an alternative testing

method for containment sumps, as described in Attachment 1. [Attachment available in written testimony PDF.]

Response: See the response to comment #6.

Comment #28: §37(a):

> Sensing devices for under-dispenser containment required by section 11-280.1-21(c) must:…
> (3) Generate a record of the status of the under-dispenser containment and the sensor's proper operation at least every thirty days.

Not all under-dispenser containment sensors are electrically connected to the automatic tank gauge. These "stand-alone" under-dispenser containment sensors function by shutting down power to the specific dispenser when tripped by the presence of liquid. They do not generate a record of status or proper operation (i.e., sensor report, alarm report.) Under-dispenser containment sensors, including "stand-alone" sensors, are annually tested for functionality.

Response: See the response to comment #5.

Commenter: Melanie Lau

Comment #29: It concerns me that the 20 tanks at Red Hill are situated over the Halawa aquifer which supplies clean drinking water for people from Moanalua to Hawaii Kai. The Department of Health should continue to be a part of the task force charged with oversight of the Administrative Order on Consent regarding tank upgrades at Red Hill. I understand that repeal of chapter 11-281 and adoption of chapter 11-280.1 is mostly for "housekeeping" reasons, to align state regulations with updates to the US EPA federal UST program, but please be sure that the State does not give away its voice or control over field-constructed tanks (such as the Red Hill tanks) or the issue.

Response: The department shares these concerns about the tanks at Red Hill and is seeking to adopt the proposed rules as part of a larger effort to address them. The proposed rules will enable the department to retain its delegation as an EPA approved UST program under 40 CFR part 281 and are specifically designed to work in concert with the progress being made under the AOC.

This rulemaking includes new requirements that apply to the Red Hill tanks and makes certain existing requirements newly apply to the tanks (see Table 1 in response to comment #7). While the majority of the proposed rule changes follow updates to the federal UST program, the state rules are more stringent than the federal rules (see Table 4 in response to comment #21).

Comment #30: [The commenter suggested numerous questions regarding Red Hill for consideration by the Navy. The full comment can be found in the written comments PDF.]

Response: This comment does not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Commenter: Department of Transportation

Comment #31: Request DOH develop a chart of requirements and deadlines to clarify and avoid confusion on when required actions are due or to be completed.

Response: The department will take this suggestion under advisement. The preparation of such a chart would require additional time and is not directly related to the development of the proposed rules.

Comment #32: §21(b)(2)(B) requires airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before the effective date of the rules to comply with the system performance standards under §20(d) not later than one year after the effective date of these rules. DOT requests the ability for State agencies to apply for an extension of the timeline for required upgrades.

Response: The State Department of Transportation (DOT) submitted this comment when they were unsure whether the Daniel K. Inouye International Airport (HNL) met the definition of a UST system. After department staff consulted with the State DOT and DOT Airports Division, a discussion between department staff and a representative of Hawaii Fueling Facility Corporation (HFFC), which operates HNL, confirmed that HFFC and the trade group Airlines for America (A4A) had already completed and updated an analysis of the tank and piping volumes at HNL and determined that less than ten percent of the system is underground. Therefore, the facility does not meet the definition of an airport hydrant fuel distribution system regulated under the proposed chapter 11-280.1. The department will retain the proposed effective date.

Comment #33: [The commenter provided numerous specific citations for sections where a change from “thirty” to “thirty-one” was recommended, mainly in §§41 to 44 pertaining to release detection and where the phrase “at least once every thirty days” is the required frequency of monitoring, in order to make these consistent with the walkthrough inspection interval of every thirty-one days. The full comment can be found in the written comments PDF.]

Response: See response to comment #18.

Commenter: Sierra Club of Hawaii

Comment #34: Thank you very much for incorporating our comment that the permitting timeframe for the Red Hill fuel tanks should be reduced. The new proposed rules reduce the timeframe from three years to one year for receiving a new permit on existing facilities that were previously exempted from permit requirements (§10(a)(1)(A)). This is an important and meaningful improvement from our perspective.

Response: Thank you. The department agrees that one year allows sufficient time for permit applications to be submitted and reviewed.

Comment #35: We are seeking the following change in the newly proposed version of the regulations in §21(d)(2)(B):

> Not later than ~~twenty~~ ten years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment.

I. Ten years is a reasonable timeframe for compliance
A. Risk to water supply is significant

The underground storage tanks at Red Hill continue to pose a serious threat to the aquifer. Each of the active underground storage tanks at the Red Hill Bulk Fuel Storage Facility can store up to 12.5 million gallons of fuel. Well-over one hundred million gallons of petroleum products are stored there at any given time. Failure to take immediate protective action is unreasonable.

Response: See response to comment #7.

Comment #36: We are seeking the following change in the newly proposed version of the regulations in HAR §11-280.1-21(d)(2)(B):

> Not later than ~~twenty~~ ten years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment.

I. Ten years is a reasonable timeframe for compliance
B. Timeframe consistent with Administrative Order on Consistent

In the AOC, paragraphs 8(b)(iii), 11, and 18(d) make clear that the Navy should anticipate new federal and state regulations for field-constructed underground storage tanks that will impose

new requirements on the Red Hill facility, consistent with the AOC.

The Health Department can impose a faster timeline because the AOC dictates only a final deadline of 22 years from the effective date. The Statement of Work provides that:

> "implementation [of the AOC] will occur in phases so that all Tanks in operation will deploy [Best Available Practicable Technology], as approved by the Regulatory Agencies, within twenty-two (22) years." Statement of Work, Red Hill Administrative Order on Consent, page 1 (emphasis added).

There is nothing in the AOC or Statement of Work that forbids the Red Hill Facility from being upgraded prior to the 22-year deadline.

Adopting regulations with the requirement for secondary containment in 10 years does not violate or jeopardize the AOC. Quite the opposite, adopting this timeframe in these regulations gives the Navy the kind of urgent justification needed to secure the necessary funding and expertise from the Department of Defense to either quickly upgrade the existing tanks or, if that is not possible, then begin the process of an orderly relocation of the fuel to a safer facility.

Response: The commenters are correct that the AOC does not limit the department's rulemaking authority. The AOC was signed after EPA's 2015 update to the federal UST rules was published in the *Federal Register*, so both the department and the Navy were aware at the time that state's rules would need to be updated by October 13, 2018 [40 CFR §281.51(a)]. State rules must be no less stringent than the federal UST rules, and the 2015 federal rules include many new requirements for field-constructed tanks (and for all UST systems). The AOC language regarding new regulations is there simply to acknowledge the department's existing authorities and responsibilities to make changes to the state UST rules.

The department respectfully disagrees that requiring upgrades to be completed within ten years is appropriate and would have no impact on the Navy's compliance with the AOC. The department determined in 2015 that the timeline contained in the AOC is an appropriate schedule for completion of upgrades to all the Red Hill tanks because it accurately reflects reasonable estimates of the time necessary to implement them. The financial implications and physical challenges associated with tank upgrades have not changed. The Navy is already working to comply with specific deadlines for deliverables under the AOC Statement of Work.

Section 3 in the AOC Statement of Work ("Tank Upgrade Alternatives" (TUA)) provides for departmental oversight of the development of alternatives—a process which is already underway—and it allows for the development of alternatives which may be superior to applying existing secondary containment technology to very large tanks for which this technology was not designed. The scoping, reporting, and decision meetings required under the AOC give the department and the EPA more opportunities to oversee and influence the Navy's process, but also take more time than the Navy deciding and implementing a TUA on its own. The department believes that setting a new, dramatically shorter timeline than that agreed to in the

AOC significantly reduces the likelihood that the Navy would continue to implement the full scope of objectives outlined in the AOC Statement of Work.

The observation that "[t]here is nothing in the AOC or Statement of Work that forbids the Red Hill Facility from being upgraded prior to the 22-year deadline" ignores the entire purpose of the AOC, which was to create an enforceable deadline. The AOC permits the Navy to expedite work if it is able. It does not, however, envision the department unilaterally, and without justification, shortening the time the Navy was given to complete the tasks it agreed to perform. The Navy is well aware of the urgency conveyed in the many public comments the department received regarding Red Hill, including those which did not address the proposed regulations. The department expects many of the tanks to meet the upgrade requirements of §21(c) [moved from proposed §21(d)(2)(B)] well before both the AOC deadline and the regulatory deadline, but believes that twenty years is a reasonable timeline for upgrades to *all* of the tanks to be completed.

Comment #37: We are seeking the following change in the newly proposed version of the regulations in HAR §11-280.1-21(d)(2)(B):

> Not later than twenty years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which ~~the director determines is protective of human health and the environment~~ results in an equivalent degree of human health and environmental protection and does not present a greater danger to human health or the environment.

II. Variance language should match state law

State law provides the department with narrow discretion to allow alternatives to the specific requirements detailed in its regulations.

> §342L-5, Hawaii Revised Statutes (HRS) states:
> Variances allowed. Provisions under this chapter deemed more stringent than the federal rules established under Subtitle I of the federal Resource Conservation and Recovery Act, as added by the federal Hazardous and Solid Waste Amendments of 1984, may be varied by the department, when the variance results in an equivalent degree of human health and environmental protection and does not present a greater danger to human health or the environment.

The regulations cannot go beyond this statutory language. Adopting our proposed changes to regulations better reflects the department's statutory authority for granting a variance for underground storage tanks via §342L-5, HRS.

Response: This comment confuses the statutory limitations on the department's authority to issue variances [§342L-5, HRS] with the department's authority to adopt rules [§§342L-3 and

342L-32, HRS]. The requirements in §21(c) [moved from proposed §21(d)(2)(B)], which involve upgrades to field-constructed tanks, constitute a rule and are therefore subject only to the statutory limitation on the department's rulemaking authority [§§342L-3 and 342L-32]. A variance, in contrast, is permission issued by the department to an owner or operator of a UST "authorizing the installation or operation of an underground storage tank or tank system in a manner deviating from full compliance with applicable standards" (i.e., the state rules) [§342L-6(c), HRS]. The department's rules, including §21(c), are not variances and thus are not subject to the limitations in §342L-5, HRS, in the manner suggested in this comment.

The equivalency standard in §342L-5, HRS, properly understood, compares the state rules with the federal rules. The department's discretion to issue a variance is limited to instances where the allowed deviation from the state rule, as compared to its federal counterpart, "results in an equivalent degree of human health and environmental protection" [§342L-5, HRS]. This standard places a limitation on the department's authority to issue variances, not the department's authority to adopt rules (this general authority is granted by §§342L-3 and 342L-32, HRS). The requirement in §21(c) that the commenter suggests rewording has nothing to do with the issuance of variances. Consequently, the equivalency standard for variances in §342L-5, HRS, is entirely inapplicable.

Furthermore, it is important to note that, to the extent that this comment is asking the department to draft §21(c) in view of the variance language in the statute, those variance provisions require the department to make a comparison between the state and federal rules and there is no federal requirement that corresponds to the upgrade requirement in §21(c). See response to comment #23.

Comment #38: We are seeking two changes in the newly proposed version of the regulations in HAR §11-280.1-21(d)(2)(B):

> Not later than ~~twenty~~ ten years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which ~~the director determines is protective of human health and the environment~~ results in an equivalent degree of human health and environmental protection and does not present a greater danger to human health or the environment.

III. Impose stricter requirements to protect water resources

The Navy has demonstrated that it can adapt to our high expectations to protect the environment. The U.S. Navy can and will do whatever is necessary to fulfill their mission and comply with state and federal law. We need to set high expectations for the Navy so we can guarantee O'ahu's water resources are fully protected for the long-term.

Response: See response to comments #7, #23, and #36. The department's approach to regulating the Navy's UST system at Red Hill takes into consideration the fact that one of the

federal laws governing federal facilities is a provision in the Resource Conservation and Recovery Act [42 United States Code §§6961(a) and 6991f(a)] that authorizes the President of the United States to exempt federal facilities, such as Red Hill, from both state and federal UST rules under certain conditions. The AOC is effective precisely because the Navy agreed to abide by its terms and is enforceable pursuant to those terms. The terms and conditions of the AOC acknowledge the physical and operational constraints present at Red Hill and the limitations of federal procurement and applicable funding mechanisms. The department's proposed rules reflect these considerations.

Commenter: Steve Jackson

Comment #39: The Hawaii Legislature indicated that Hawaii rules should be equal to federal rules. Please adopt rules identical to federal rules.

Response: The department's rulemaking authority in §342L-3 and §342L 32 does not limit the department's discretion to only being "equal" to the federal rules. Federal rules [40 CFR part 281] require the state UST rules to be no less stringent than the federal UST rules [40 CFR part 280], and specifically allow that state rules may also be more stringent than the federal rules. The state rules are already more stringent than the federal rules in several areas, such as permitting requirements. The proposed chapter 11-280.1 includes additional state rules which will be more stringent. For example, several of these differences are discussed in the "Rationale and list of changes" (at http://health.hawaii.gov/shwb/ust-har/) and in the responses to comments #12, #14, and #21. The department is confident that the ways in which the proposed state rules are more stringent than their federal counterparts is consistent with its legislative mandate to protect public health and the environment.

The following comments were given verbally at the public hearing on May 31, 2018. The comments have been summarized. Full comments can be found in the hearing transcript PDF.

Commenter: Erwin Kawata, Honolulu Board of Water Supply

Comment #40: [Commenter read from Board of Water Supply written comments. See comments #20 to #26.]

Response: See response to comments #20 to #26.

Commenter: David Kimo Frankel, Sierra Club

Comment #41: The focus of my comments is narrow, dealing with field-constructed tanks and that section of the rules, which is §21(d)(2)(B). More than 25 years ago, the legislature required the Department of Health to enact rules that required existing underground storage tanks be replaced or upgraded by December 22nd, 1998. And rather than doing that the Department of Health is proposing to allow the Navy until 2038, forty years after the legislative deadline.

Response: This comment appears to be based on a misunderstanding of the term upgrade. The legislative requirement the commenter refers to is in §342L-32(b)(3), HRS:

> Existing underground storage tanks or existing tank systems shall be replaced or upgraded not later than December 22, 1998, to prevent releases for their operating life.

The language from the state statute above is taken directly from the federal requirement for state program approval in 40 CFR §281.31, "Upgrading existing UST systems," which prior to 2015, read:

> In order to be considered no less stringent than the corresponding federal upgrading requirements, the state must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills.

The upgrades referred to in 40 CFR §281.31 are those listed in §280.21 of the federal UST rules (§280.21 is also called "Upgrading of existing UST systems") and pertain only to corrosion protection and spill and overfill prevention equipment.

The state UST program is an EPA-approved program, meaning the state rules must be at least as stringent as the federal rules so they can be approved by EPA to apply in lieu of the federal rules. The proposed requirement for existing field-constructed tanks to be upgraded with secondary containment or alternative tank and piping design that the commenter refers to [§21(c), moved from proposed §21(d)(2)(B)] has no counterpart in the federal requirements. No such upgrades are required for any tanks under the federal rules, nor have they ever been. In the federal rules, from which the state statutory language derives, "upgrade" means adding corrosion protection and spill and overfill prevention equipment to already installed UST systems.

The following table summarizes the upgrades required by the federal UST rules and how these apply to field-constructed tanks and approved state UST programs.

Table 5

Version of federal rules	1988	2015
Required upgrades	• Corrosion protection for tanks and piping [§280.21(b) and (c)] • Spill and overfill prevention equipment [§280.21(d)]	• Corrosion protection for tanks and piping [§280.21(b) and (c)] • Spill and overfill prevention equipment [§280.21(d)]
Does requirement apply to field-constructed tanks?	No [§280.10(c)(5)]	Yes, with some differences • Corrosion protection for tanks and piping [§280.252(b)(1)] • Spill and overfill prevention equipment [§280.252(b)(2)]
Requirements for approved state programs	Upgrade requirements must apply by December 22, 1998, but do not apply to field constructed tanks	Upgrade requirements for field-constructed tanks must apply by October 13, 2021

In order to better distinguish between upgrades to existing (already installed) UST systems and requirements for new tanks or UST system components at the time of installation, the department is moving the proposed §21(c), 21(d)(1)(A), and 21(d)(2)(A) to §§25, 20(g)(1), and 20(g)(2), respectively. These requirements apply to new tanks, piping, and dispenser systems at the time of installation. So, while the requirements remain the same, the movement of these requirements will make it more obvious that the concept of "upgrades" applies only to existing UST systems. Requirements that apply to new tanks or UST system components at installation are a separate portion of the rules and should not be thought of as being upgrade requirements.

Comment #42: There is a standard in the new rule that is not as strict as the state statute that allows the Red Hill tanks to avoid secondary containment. The standard articulated in the proposed rule is that whatever they do is protective of human health and the environment. That standard is inconsistent with the statutory provision in §342L-5 [Hawaii Revised Statutes] and therefore is invalid.

Response: See response to comment #37.

Commenter: Alan Burdick, Sierra Club

Comment #43: I want to express concern that this is nominally a 20-year project. I expect that deadline will slip as all deadlines seem to slip. My concern is that you [Department of Health] are our only eyes and ears under our funny sort of federalism under our environmental laws. I ask that you ensure that these regulations require the Navy to provide you in a timely manner

all plans, communications between the Navy and the Pentagon and anyone else, all actual budgets, all actual funding, all contracting information, and all reports of actual work every step of the way with complete transparency throughout the this purported 20-year project. We want complete transparency. We want complete accountability. We do not want surprises. We don't want to be told 20 years from now that, "Oh no, no real progress has actually happened." You are our eyes and ears. You need to be our eyes and ears. You are the only ones who can hold the Navy accountable.

Response: See response to comment #7.

Commenter: Nathan Yuen, Sierra Club

Comment #44: So arguably in 1992 when the state legislature instructed the Department of Health to develop administrative rules, had things been done on time by 1998, and had sufficient time passed for the Navy to actually upgrade the tanks, which was a period of 6 years, arguably in 2014 that leak could have been stopped or could have been prevented. So to continue to provide even more time for the upgrade to occur, another 20 years, presents way more risk than we can afford. The aquifer at Pearl Harbor developed over hundreds of thousands, if not millions, of years and it's an irreplaceable resource for our islands. So I would like to see the tanks not be there at all, in fact moved to another location, but it's really a matter of money, and whether the federal government has that money or has the will to do that. Short of that, I think we need the double storage tanks.

Response: See responses to comments #7, #23, and #41.

Commenter: Jun Shin, Sierra Student Coalition

Comment #45: As an 18-year-old, in twenty years I'll be 38 years old and I really don't want to wait until I'm 38 to be dealing with this. By then I expect to have kids, or at least plan to have kids, and so I don't want to be in a position where I have to have my kids deal with this problem. And so I hope to see some action right now.

Response: See response to comment #7.

Commenter: Marti Townsend, Sierra Club

Comment #46: As the other testifiers have noted, 20 years is too long. The way the regulations were written previously was inconsistent with the statutes. Department of Health granted basically an exception to all field-constructed tanks and as a result of that, these tanks are not up to snuff as they should be and we are now handing the next generation a problem that they may not be able to solve. The challenge before us today here is to try and address it now as

opposed to pushing it off, pushing it down another 20 years. We've advocated for ten years as a reasonable expectation.

Response: See responses to comments #7 and #41.

Comment #47: I want to emphasize that requiring in the rules consistency with secondary containment, compliance with the expectations for all other underground storage tanks, requiring that sooner than 20 years is not inconsistent with the Administrative Order on Consent for Red Hill. This is because the way the order is written, it sets the 20-year deadline as a far-out deadline, it says that action shall be taken within that period.

Response: See response to comment #36.

Commenter: Katie Adamson, Aloha Petroleum

Comment #48: [Commenter summarized written comments submitted. See comments #27 and #28.]

Response: See responses to comments #27 and #28.

Commenter: Colleen Soares, Sierra Club

Comment #49: Department of Health and the Board of Water Supply both in the last few months have put out some fairly detailed letters, which you can see on their websites, asking the Navy to actually do what they said they would do, to share documents with the Department of Health and the Board of Water Supply. Board of Water Supply says, "we continue to ask the Navy distribute meeting handouts and other information documents two weeks prior to the start of each meeting," and that stakeholders—us—are afforded the opportunity to thoroughly review materials ahead of time. "And we also request that the Navy and its contractors provide copies of all materials disclosed at the meeting that they committed to share with subject matter specialists." That hasn't been done as far as I know.

On the Board of Water of Supply website there's a six-page letter wherein they detail many of their objections having to do with the process of the study itself. They're questioning AECOM. I come guess AECOM is the main engineering facility that is in charge of this. It appears that the Department of Health is questioning their reliability, their substantiability about doing the study itself.

Response: This comment does not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Commenter: Alison Bhattacharyya, Sierra Club

Comment #50: I'm here as a cancer survivor and a mother of three kids, very concerned about the water quality. I look at the timeline, 2014 was the original leak. 2015 I got a letter from Earnest Lau saying, "did you guys know this is happening?" Which I didn't. And immediately got sort of involved and agitated about the Red Hill fuel tanks. Now we are at 2018, we're still deciding on which is the correct, most optimal solution and it's, according to the Board of Water Supply, they must be double-lined which is, I think, option six. So it's taken us four years to get to where we already know what's the best and safest optimal solution is. Presumably we can't shut them down. I think that's taken a really long time. I think there is not this sense urgency and I guess we're relying on the Department of Health to hold their toes to the fire and put some urgency into solving this problem.

Response: See response to comments #7 and #23.

Comment #51: [The commenter addressed some questions to the Navy about whether it is possible to reduce the amount of fuel stored at Red Hill.]

Response: This comment does not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Commenter: Melodie Aduja, Democratic Party

Comment #52: The Democratic Party, Oahu County, has passed a resolution requesting and urging that the United States Navy retrofit the 20 tanks at Red Hill with double-walls or relocate the jet fuel within five years.

Response: This comment does not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Commenter: Kimiko Lattaela Walter, Sierra Club

Comment #53: I'm a water drinker like all of you. I have a four-year old daughter, I live on the south shore of Oahu, like many of you. The concern for me is that these tanks have been violating state law for a couple of decades now, I think that was established. So the fact that we have to wait another 20 years feels to me like kicking the can down the road, waiting until the very last minute. So I just want to go on the record as saying I appreciate all work the Department of Health has done and the other agencies that are involved, but I do think that 20 years is too long for us to wait where every day there could be another, man-made or not, mistake where we have thousands, tens of thousands of gallons leaking into our environment. For me this is unacceptable. So please shorten the timeline.

Response: See responses to comments #7 and #41.

Commenter: Robinah Gibola, Sierra Club

Comment #54: When it comes to water what I've been questioning is why are we not finding a solution faster? Looking back from where I come from, in northern Uganda, we have a water crisis and the leaders are not doing anything because we don't have the money, we don't have the technical support. But the fact that being here in Hawaii, the resources are there, we have the technological people to do something and 20 years is actually too much.

Response: See response to comment #7.

Commenter: Liz Bogdanski

Comment #55: [Commenter summarized written comments submitted. See comment #18.]

Response: See response to comment #18.

Commenter: Jodie Malinoski, Sierra Club

Comment #56: I had the opportunity to do a round of outreach on Red Hill at some of the neighborhood boards that would be directly affected if the water were to become contaminated and I just wanted to report back that nine neighborhood boards did pass a resolution to urge the Navy to upgrade their tanks in a way that is more protective of our water.

Response: This comment does not directly address or suggest changes to the proposed rules, so the department is not providing a response.

Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapter 281 and Adoption of Hawaii Administrative Rules, Title 11, Chapter 280.1 Regarding Underground Storage Tanks (USTs)

Background

Hawaii is an approved state for the U.S. Environmental Protection Agency (EPA)'s national underground storage tank (UST) program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle I. In order to maintain approval and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 281 (40 CFR 281) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR 280, by October 13, 2018. The new (2015) federal rules improve environmental protection by increasing emphasis on properly operating and maintaining equipment. The lack of proper operation and maintenance of UST systems has been found to be one of the main causes of release of regulated substances to the environment. New requirements such as regular release detection equipment testing, walkthrough inspections, and proper operation and maintenance are key for preventing and quickly identifying releases.

The Department of Health (department) is proposing to repeal chapter 11-281, Hawaii Administrative Rules (HAR) and adopt chapter 11-280.1, HAR. This proposed rulemaking action involves numerous changes to the regulations. Most of the proposed changes are federal changes and are required for the continued EPA approval of the State UST program. For these federally-mandated changes, the department has no discretion to consider less restrictive alternatives. Therefore, the requirements of chapter 201M, Hawaii Revised Statutes do not apply to these changes. This small business impact statement focuses only on state-initiated changes that are not federally required.

The proposed state-initiated change affecting small businesses (as "affects small business" is defined in §201M-1) is:
Require secondary containment for petroleum underground storage tanks (USTs) and piping installed before August 9, 2013, except for airport hydrant systems and UST systems with field-constructed tanks. (Secondary containment is already required for tanks and piping installed on or after August 9, 2013.) This requirement is proposed to become effective ten years after the effective date of the new rules.

The existing requirement is in §11-281-17, Hawaii Administrative Rules (HAR) and will be moved to §11-280.1-21(d)(1)(A). The new requirement will be in §11-280.1-21(d)(1)(B), HAR.

An analysis is provided below. The analysis covers the following requirements of §201M-2(b), Hawaii Revised Statutes:

(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
(2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

(3) 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;
(4) The probable monetary costs and benefits to the implementing agency and 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;
(5) 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;
(6) How the agency involved small business in the development of the proposed rules; and
(7) 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.

(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules

Hawaii has approximately 717 facilities statewide that collectively own about 1507 regulated underground storage tanks (USTs). About 218 small businesses own regulated USTs.

Businesses that will be directly affected by, and bear the cost of, the proposed requirement are those that own or operate a UST storing petroleum that was installed prior to August 9, 2013 and does not have secondary containment and those whose UST systems have single-walled piping. The current chapter 11-281, HAR requires secondary containment for USTs and piping installed on or after August 9, 2013.

About 154 facilities within the state own a total of 417 single-walled USTs that must be closed or provided with secondary containment under the proposed rules. Statewide, about 113 facilities have some single-walled piping, and most of these facilities are the same ones with single-walled tanks. Many of these facilities are owned by the same large companies.

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

About 52 affected facilities are small businesses, owning a total of 150 single-walled tanks (including 12 tanks that are temporarily closed). About 22 of these small businesses will need to replace single-walled tanks only and 30 will need to replace both single-walled tanks and piping. The affected small businesses are mainly gas stations.

UST system owners replacing single-walled tanks and piping will experience a negative financial impact in the short-term due to the cost of replacing their old tank(s) and piping with a new system provided with secondary containment or closing the old tank(s) that can no longer meet requirements. In the long-term, closing or replacing the single-walled UST system could help them avoid more costly release investigations, release response, and remediation costs.

(3) 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 average costs of removal/closure and replacement of tank systems varies widely and depends on a number of factors, including the number and size of tanks in a tank system, the amount of piping, and location variables such as the depth to the water table. According to two local contractors who perform this type of work, removal of three 10,000-gallon single-walled tanks and installation of three 10,000-gallon tanks with secondary containment could cost anywhere from $350,000 to $750,000, depending on site conditions. This is equivalent to approximately $4,000 to $8,000 per tank per year over the 30-year life of the tanks. The cost of replacing piping for an average gas station site is estimated to be $25,000 to $42,000. These estimates include the cost of a site assessment, but do not include any remediation costs.

The most common tank configuration at small businesses with single-walled USTs is one to three tanks ranging in size from 8,000 to 10,000 gallons, so these cost estimates are on the high side of representative. About one third of the affected small businesses will incur much lower costs to replace significantly smaller tanks or only one 10,000-gallon tank. About six small businesses may face higher costs to replace tanks larger than 10,000 gallons and/or to replace more than three tanks.

During the course of replacing old UST systems, tank owners may also incur costs for remediation. UST system owners and operators are already required to have financial assurance (insurance, surety bond, letter of credit, etc.) covering a minimum of $500,000 in remediation costs. The department is aware of cases where cleanups have cost more than one million dollars, but costs around $100,000 are typical. These costs are not associated with the proposed rules; however, the requirement to provide tanks and piping installed prior to August 9, 2013 with secondary containment may result in UST system owners incurring remediation costs sooner than would otherwise be the case.

(4) The probable monetary costs and benefits to the implementing agency and 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

There are no monetary costs or benefits to the department or other regulatory agencies associated with the proposed changes. UST program staff expect to receive regulatory paperwork requiring review (closure reports, site assessments, permit applications, installation notification forms, release notifications, release response reports) in clusters that may slow processing time around the implementation deadline.

(5) 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

As a consideration to small businesses affected by the proposed rule requiring secondary containment, the implementation timeline is set for ten years after the effective date of the new rules. In 2012, the department proposed to require tanks 30 years old or of unknown age to be provided with secondary containment. The SBRRB recommended that the rules proposing this requirement proceed to public hearing (letter dated April 23, 2012), but the rule was not finalized. Owners and operators were made aware at that time that the department would consider proposing this requirement again. By the time that owners and operators are required to either close or replace their single-walled tanks with secondarily contained tanks, all affected tanks will be at least 30 years old and affected small business owners will have had fifteen years of notice, a very reasonable timeline to prepare and consider business decisions for their aging facilities.

(6) How the agency involved small business in the development of the proposed rules

The department has included UST owners and operators, including small businesses, industry consultants, and other interested parties on its mailing list throughout the process of developing the proposed rules. The department e-mailed and mailed out a notice December 20-22, 2017 including information on where the public could view or download a draft of chapter 11-280.1, HAR online and inviting businesses to attend public meetings regarding the rulemaking between January 17 and February 1, 2018 on Oahu, Hawaii Island, Maui, and Kauai. The department will address small business concerns and official comments received from small businesses during the public hearing and comment period (planned for June 2018) before finalizing the rules.

(7) 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 proposed requirements do not have a direct counterpart in the federal UST regulations.

DEPARTMENT OF HEALTH

Repeal of Chapter 11-281 and Adoption of
Chapter 11-280.1
Hawaii Administrative Rules

June 22, 2018

1. Chapter 11-281, Hawaii Administrative Rules, entitled "Underground Storage Tanks", is repealed.

2. Chapter 11-280.1, Hawaii Administrative Rules, entitled "Underground Storage Tanks", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-280.1

UNDERGROUND STORAGE TANKS

Subchapter 1 Program Scope and Installation Requirements for Partially Excluded UST Systems

Subchapter 2 UST Systems: Design, Construction, and Installation

Subchapter 3 General Operating Requirements

Historical note: This chapter is based

substantially upon chapter 11-281. [Eff 1/28/00; am and comp 8/09/13; R]

SUBCHAPTER 1

PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS

§§11-280.1-1 to 11-280.1-9 (Reserved.)

§11-280.1-10 Applicability. (a) The requirements of this chapter apply to all owners and operators of an UST system as defined in section 11-280.1-12 except as otherwise provided in this section.

(1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:

(A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before the effective date of these rules must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than one year after the effective date of these rules.

(B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter except that those installed before August 9, 2013 must meet the applicable requirements of

subchapter 4 no later than one year after the effective date of these rules.

(2) Any UST system listed in subsection (c) must meet the requirements of section 11-280.1-11.

(b) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(4) Any UST system whose capacity is one hundred ten gallons or less;

(5) Any UST system that contains a de minimis concentration of regulated substances; and

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, and 12 do not apply to:

(1) Wastewater treatment tank systems not covered under subsection (b)(2);

(2) Aboveground storage tanks associated with:

(A) Airport hydrant fuel distribution systems; and

(B) UST systems with field-constructed tanks;

(3) Any UST systems containing radioactive material that are regulated under the Atomic

Energy Act of 1954 (42 U.S.C. 2011 and following); and

(4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

§11-280.1-11 Installation requirements for partially excluded UST systems. (a) Owners and operators must install an UST system listed in section 11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-12 Definitions. When used in this chapter, the following terms have the meanings given below:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Containment sump" means a liquid-tight container

that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the

dispenser and connect the dispenser to the underground piping.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which

there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid

traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

(1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, from

the director to install or operate an UST or tank system. A permit authorizes owners or operators to install and operate an UST or tank system in a manner, or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities" (including gathering lines) means pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an

UST system into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic

depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer, except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:

(1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
(2) Tank used for storing heating oil for consumptive use on the premises where stored;
(3) Septic tank;
(4) Pipeline facility (including gathering lines):
    (A) Which is regulated under 49 U.S.C. chapter 601; or
    (B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
(5) Surface impoundment, pit, pond, or lagoon;
(6) Storm water or wastewater collection system;
(7) Flow-through process tank;
(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
(9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground

piping, underground ancillary equipment, and containment system, if any.

"Variance" means a special written authorization from the director to own, install, or operate an UST or tank system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. [Eff] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice. The following codes of practice may be used as guidance for complying with section 11-280.1-11:

(1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

(4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§§11-280.1-14 to 11-280.1-19 (Reserved.)

SUBCHAPTER 2

UST SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

§11-280.1-20 Performance standards for UST systems. (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet all applicable requirements of this subchapter. UST systems must meet the requirements of this section as follows:

(1) UST systems installed after December 22, 1988, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the requirements of this section, except as specified in subsection (g).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed on or after the effective date of these rules must meet the requirements of this section.

(b) Tanks. Each tank must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

(2) The tank is constructed of steel and cathodically protected in the following manner:

(A) The tank is coated with a suitable

dielectric material;

(B) Field-installed cathodic protection systems are designed by a corrosion expert;

(C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and

(D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or

(3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1) to (4).

(c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of a non-

corrodible material; or

(2) The piping is constructed of steel and cathodically protected in the following manner:
    (A) The piping is coated with a suitable dielectric material;
    (B) Field-installed cathodic protection systems are designed by a corrosion expert;
    (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
    (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or

(3) The piping is constructed of metal without additional corrosion protection measures provided that:
    (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
    (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) to (3).

(d) Spill and overfill prevention equipment.

(1) Except as provided in paragraphs (2) and (3), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the

following spill and overfill prevention equipment:

(A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(B) Overfill prevention equipment that will:

(i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;

(ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

(iii) Restrict flow thirty minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1) if:

(A) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraph (1)(A) or (B); or

(B) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (1)(B) when

overfill prevention is installed or replaced after the effective date of these rules.

(4) Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled "overfill alarm" and located where the delivery person can clearly see and hear the alarm in order to immediately stop delivery of the product.

(5) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

(1) The installer has been certified by the tank and piping manufacturers;

(2) The installer has been certified or licensed by the department;

(3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;

(4) The installation has been inspected and approved by the department;

(5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or

(6) The owner and operator have complied with another method for ensuring compliance with subsection (e) that is determined by the department to be no less protective of human

health and the environment.

(g) Secondary containment.

(1) UST systems installed on or after August 9, 2013, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for:

(A) Suction piping that meets the requirements of section 11-280.1-41(b)(6);

(B) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and

(C) Piping associated with airport hydrant systems. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-21 Upgrading of UST systems. (a) All UST systems must comply with one of the following requirements:

(1) UST system performance standards in section 11-280.1-20(b) to (d);

(2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before the effective date of these rules:

(A) The system performance standards in section 11-280.1-20(b) and (c); and

(B) Not later than one year after the effective date of these rules, the system performance standards under

section 11-280.1-20(d); or

(3) Closure requirements under subchapter 7.

(b) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than ten years after the effective date of these rules, tanks and piping installed before August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(c) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than twenty years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment, except for:

(1) Suction piping that meets the requirements of section 11-280.1-41(b)(6);

(2) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and

(3) Piping associated with airport hydrant systems. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-22 (Reserved.)

§11-280.1-23 Tank and piping design for hazardous substance UST systems. Owners and operators of hazardous substance UST systems must provide secondary containment for tanks and underground piping that meets the requirements of section 11-280.1-24. [Eff] (Auth: HRS §§342L-3, 342L-32)

(Imp: HRS §§342L-3, 342L-32)

§11-280.1-24 Secondary containment design. (a) Secondary containment systems must be designed, constructed, and installed to:

(1) Contain regulated substances leaked from the primary containment until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every thirty-one days.

(b) Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a leak from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain one hundred percent of the capacity of the largest tank within its boundary;

(2) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and

(3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-25 Under-dispenser containment. (a) Dispenser systems installed on or after August 9, 2013, other than for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must have under-dispenser containment that meets the requirements in subsection (c).

(b) Dispenser systems installed on or after the effective date of these rules must have under-dispenser containment that meets the requirements in subsection (c).

(c) Under-dispenser containment required by subsection (a) or (b) must:

(1) Be liquid-tight on its sides, bottom, and at any penetrations;

(2) Be compatible with the substance conveyed by the piping;

(3) Allow for visual inspection and access to the components in the containment system; and

(4) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-26 Performance standards and design for UST systems--codes of practice. (a) The following codes of practice may be used to comply with section 11-280.1-20(b)(1):

(1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or

(2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b)(2):

(1) Steel Tank Institute "Specification STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

(2) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for

Steel Underground Storage Tanks";

(3) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

(4) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):

(1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(2) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";

(3) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

(4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

(1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

(2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

(1) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(2) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(3) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(4) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):

(1) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

(2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(3) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

(g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities". [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§§11-280.1-27 to 11-280.1-29 (Reserved.)

SUBCHAPTER 3

GENERAL OPERATING REQUIREMENTS

§11-280.1-30 Spill and overfill control. (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-31 Operation and maintenance of corrosion protection. All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

(1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(A) Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and

(B) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

(3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:

(A) The results of the last three inspections required in paragraph (3); and

(B) The results of testing from the last two inspections required in paragraph (2). [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-32 Compatibility. (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

(1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

(A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

(2) Use another option determined by the department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section 11-280.1-34(d) documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff

] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-33 Repairs allowed. (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

(2) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

(3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;

(4) Prior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3);

(5) Prior to the return to use of a repaired UST system, any repaired piping that routinely contains product must pass a line tightness test in accordance with section 11-280.1-44(2);

(6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping,

and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;

(7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and

(8) Prior to the return to use of repaired spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-34 Notification, reporting, and recordkeeping. (a) Notification. Owners and operators shall notify the department of any of the following changes in information relating to an UST or tank system by submitting the "Notification for Underground Storage Tanks" form prescribed by the director:

(1) Planned permanent closure or change-in-service, scheduled excavation work for permanent closure or change-in-service, or

completed closure or change-in-service;

(2) Temporary closure or the return to currently-in-use status;

(3) Changes in product dispensing method, dispenser, or under dispenser containment;

(4) Changes in financial responsibility mechanism;

(5) Changes in leak detection method;

(6) Changes in spill and overfill prevention method;

(7) Changes in piping;

(8) Changes in type of regulated substances stored;

(9) Changes in corrosion protection mechanism; and

(10) Installation of or changes in secondary containment.

(b) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) within thirty days following any of the changes requiring notification, except that:

(1) Notification of planned permanent closure or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure or change-in-service;

(2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;

(3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and

(4) Notification of temporary closure must be received by the department within thirty days of the UST system having met the definition of temporary closure in section 11-280.1-12.

(c) Reporting. Owners and operators must submit

the following information to the department:

(1) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);

(2) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free product removal (section 11-280.1-64), investigation of soil and groundwater cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66)

(3) Quarterly release response reports (section 11-280.1-65.2);

(4) Current evidence of financial responsibility as required in section 11-280.1-110; and

(5) Notice of changes in Designated Class A or B Operators (section 11-280.1-241(c)).

(d) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));

(2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));

(3) Documentation of compatibility for UST systems (section 11-280.1-32(c));

(4) Documentation of UST system repairs (section 11-280.1-33(b));

(5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(b));

(6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));

(7) Documentation of compliance with under-

dispenser containment sensing device requirements (section 11-280.1-37(b));

(8) Documentation of compliance with release detection requirements (section 11-280.1-45);

(9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);

(10) Documentation of operator training (section 11-280.1-245);

(11) Permits or variances or both, including all documentation, as specified in section 11-280.1-334(a); and

(12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).

(e) Availability and maintenance of records.

(1) Owners and operators must keep the required records at the UST site or an alternative location approved by the department.

(2) Owners and operators must make the records immediately available for inspection by the department at the UST site.

(3) Permanent closure records required under section 11-280.1-74 may be maintained or submitted to the department as provided in section 11-280.1-74.

(f) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes. [Eff] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-3, 342L-7, 342L-7.5, 342L-30)

§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment. (a)

Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than once every thirty-one days. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or

(B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);

(ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).

(2) Containment sumps used for interstitial

monitoring of piping must prevent releases to the environment by meeting one of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than annually. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or

(B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the

prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-36 Periodic operation and maintenance walkthrough inspections. (a) To properly operate and maintain UST systems, beginning not later than one year after the effective date of these rules, owners and operators must conduct walkthrough inspections that, at a minimum, check the following equipment as specified below:

(1) Every thirty-one days:

(A) Spill prevention equipment:

(i) Visually check for damage;

(ii) Remove liquid or debris;

(iii) Check for and remove obstructions in the fill pipe;

(iv) Check the fill cap to make sure it is securely on the fill pipe; and

(v) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(B) Release detection equipment:

(i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(ii) Ensure records of release detection testing are reviewed and current;

(2) Annually:

(A) Containment sumps:

(i) Visually check for damage, leaks to the containment area, or releases to the environment;

(ii) Remove liquid (in contained sumps) or debris; and

(iii) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and

(B) Hand held release detection equipment: Check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

(3) For UST systems receiving deliveries at intervals greater than every thirty-one days, spill prevention equipment may be checked in accordance with paragraph (1)(A) prior to each delivery; and

(4) For airport hydrant systems, at least once every thirty-one days if confined space entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):

(A) Hydrant pits:

(i) Visually check for any damage;

(ii) Remove any liquid or debris; and

(iii) Check for any leaks; and

(B) Hydrant piping vaults: Check for any hydrant piping leaks.

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-37 Periodic inspection and maintenance

of under-dispenser containment sensing devices. (a) Sensing devices for under-dispenser containment required by section 11-280.1-25 must:

(1) Be operated and maintained in accordance with one of the following:
    (A) The manufacturer's instructions;
    (B) A code of practice developed by a nationally recognized association or independent testing laboratory; or
    (C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and (B).
(2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

(b) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a). Written documentation of all inspection, testing, and maintenance must be maintained for at least three years. All records that the UDC sensor and connected equipment are designed to produce must be maintained for at least three years after the record is generated. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-38 General operating requirements--codes of practice. (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):

(1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

(2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

(3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

(4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

(1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines";

(3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

(4) National Fire Protection Association Standard 326, "Standard for the Safeguarding

of Tanks and Containers for Entry, Cleaning, or Repair";

(5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

(6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

(7) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(8) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".

(e) The following codes of practice may be used to comply with section 11-280.1-33(a)(6):

(1) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";

(2) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or

(3) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(f) The following code of practice may be used to comply with section 11-280.1-35(a)(1), (2) and (3): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

[Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-39 (Reserved.)

SUBCHAPTER 4

RELEASE DETECTION

§11-280.1-40 General requirements for all UST systems. (a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Utilizes equipment compatible with the regulated substances being stored;

(3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;

(4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame

recommended by the equipment manufacturer, whichever is more frequent. Beginning one year after the effective date of these rules, as applicable to the facility, the test must cover at a minimum the following components and criteria:

(A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

(B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(C) Automatic line leak detector: test operation to meet criteria in section 11-280.1-44(1) by simulating a leak;

(D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and

(5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the

department in accordance with subchapter 5.

(c) Any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-41 Requirements for petroleum UST systems. (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

(1) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks:

(A) Tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Not later than ten years after the effective date of these rules, tanks

installed before August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(C) Tanks installed on or after August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons:

(A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(3) UST systems with field-constructed tanks with a capacity greater than 50,000 gallons:

(A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10); and

(B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:

(1) Piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with

section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or

(iii) Meet the standards in paragraph (6)(A) to (E).

(2) Not later than ten years after the effective date of these rules, piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); and

(ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); or

(ii) Meet the standards in paragraph (6)(A) to (E).

(3) Piping installed on or after August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the technical specifications in paragraph (2)(A) or (B).

(4) Piping for UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant fuel distribution system:

(A) Piping installed before the effective

date of these rules must meet the technical specifications in paragraph (1)(A) or (B).

(B) Not later than twenty years after the effective date of these rules, piping installed before the effective date of these rules must meet the technical specifications in paragraph (2)(A) or (B), unless an alternative design is approved by the director under section 11-280.1-21(c).

(C) Piping installed on or after the effective date of these rules must meet the technical specifications in paragraph (2)(A) or (B).

(5) Piping for airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity greater than 50,000 gallons must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).

(B) Suction piping. Underground piping that conveys regulated substances under

suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances;

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or

(iv) Meet the standards in paragraph (6)(A) to (E).

(6) No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure;

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(C) Only one check valve is included in each suction line;

(D) The check valve is located directly below and as close as practical to the suction pump; and

(E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-42 Requirements for hazardous

substance UST systems. Owners and operators of hazardous substance UST systems must monitor these systems in accordance with section 11-280.1-43(7) at least every thirty-one days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1). [Eff] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-43 Methods of release detection for tanks. Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

(1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:
    (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
    (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
    (C) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
    (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(F) Product dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn, and the meter is calibrated every three hundred sixty-five days; and

(G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(2) Manual tank gauging. Manual tank gauging must meet the following requirements:

(A) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;

(B) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;

(C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(D) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(E) A release is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (four test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551–1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551–1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551–1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1,001–2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

(F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method to meet the requirements of this subchapter.

(3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following

requirements:

(A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;

(B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and

(C) The test must be performed with the system operating in one of the following modes:

(i) In-tank static testing conducted at least once every thirty-one days; or

(ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty-one days.

(5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater,

rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty-one days;

(D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(F) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

(A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable

materials);

(C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(A) For double walled UST systems, the sampling or testing method can detect a

leak through the inner wall in any portion of the tank that routinely contains product;

(B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty-one days;

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:

(A) Report a quantitative result with a calculated leak rate;

(B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty gallons within thirty-one days; and

(C) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(9) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(B) The owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), and the department approves the method. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator

must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

(10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.

(A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(B) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(C) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(E) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one

days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-44 Methods of release detection for piping. Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).

(2) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.

(A) (i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test—leak detection rate not to exceed (gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS
≥100,000 GALLONS IN VOLUME

First test	Not later than three years after the effective date of these rules (may use up to 6.0 gph leak rate).
Second test	Between three and six years after the effective date of these rules (may use up to 6.0 gph leak rate).
Third test	Between six and seven years after the effective date of these rules (must use 3.0 gph for leak rate).
Subsequent tests ..	Not later than seven years after the effective date of these rules, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

(B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a line tightness test (conducted in accordance with subparagraph (A) using the leak rates for the semiannual test) at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(D) Another method approved by the

department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-45 Release detection recordkeeping. All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;

(2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:

(A) The results of annual operation tests

conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section 11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;

(B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and

(C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is conducted;

(3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and

(4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS §§342L-3, 342L-7.5, 342L-33)

§11-280.1-46 Release detection--codes of practice. (a) The following code of practice may be

used to comply with section 11-280.1-40(a)(4): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

§§11-280.1-47 to 11-280.1-49 (Reserved.)

SUBCHAPTER 5

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

§11-280.1-50 Reporting of suspected releases. Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

(1) The discovery by any person of evidence of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank,

or liquid in the interstitial space of secondarily contained systems), unless:

(A) The system equipment or component is found not to be releasing regulated substances to the environment;

(B) Any defective system equipment or component is immediately repaired or replaced; and

(C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

(3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-41 and 11-280.1-42 that indicate a release may have occurred unless:

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;

(B) The leak is contained in the secondary containment and:

(i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) Any defective system equipment or component is immediately repaired or replaced;

(C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or

(D) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff] (Auth: HRS §§342L-3, 342L-34) (Imp: HRS §§342L-3, 342L-34)

§11-280.1-51 Investigation of off-site impacts. When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to the department's attention by any person. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-52 Release investigation and confirmation steps. (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps or another procedure approved by the department:

(1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) or, as appropriate, secondary containment testing

described in section 11-280.1-33(a)(6).

(A) The test must determine whether:

(i) A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping; or

(ii) A breach of either wall of the secondary containment has occurred.

(B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.

(C) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

(D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.

(2) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the

presence and source of the release.

(A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 6;

(B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests required by subsection (b) as well as performance claims pursuant to section 11-280.1-40(a)(5). [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-53 Reporting and cleanup of spills and overfills. (a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-280.1-65.3.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

(1) Spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and

(2) Spill or overfill of a hazardous substance that results in a release to the environment

that equals or exceeds its reportable quantity as determined in compliance with section 11-451-6.

(c) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or a spill or overfill of a hazardous substance that is less than the reportable quantity as determined in compliance with section 11-451-6. If cleanup cannot be accomplished within twenty-four hours, then the owners and operators must immediately notify the department of the incident and continue cleaning up the spill or overfill. Owners and operators must also complete and submit to the department a written report of the actions taken in response to the spill or overfill within twenty days.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

§§11-280.1-54 to 11-280.1-59 (Reserved.)

SUBCHAPTER 6

RELEASE RESPONSE ACTION

§11-280.1-60 General. Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b)

and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-61 Immediate response actions. (a) Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following response actions within twenty-four hours:

(1) Report the release to the department by telephone;

(2) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST or tank system as possible;

(3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and

(4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must submit to the department a written notice of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported

under this section. [Eff] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

§11-280.1-61.1 Posting of signs. (a) If the department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-62 Initial abatement measures and site assessment. (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

(1) Continue to remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement, or release response action activities;

(5) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;

(6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;

(7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; and

(8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.

(b) Within twenty days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-63 Initial site characterization. (a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site assessment required under section 11-280.1-62(a)(5); and

(4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine

whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

§11-280.1-64 Free product removal. (a) At sites where investigations under section 11-280.1-62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63, or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements of this section, owners and operators must:

(1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(4) Prepare and submit to the department, within forty-five days after confirming a release, a free product removal report that provides

at least the following information:

(A) The name of the person responsible for implementing the free product removal measures;

(B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(C) The type of free product recovery system used;

(D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) The type of treatment applied to, and the effluent quality expected from, any discharge;

(F) All actions already performed or currently underway to remove free product, including steps that have been or are being taken to obtain necessary permits for any discharge;

(G) The disposition of the recovered free product; and

(H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than thirty days following confirmation of a release, or sooner if directed by the department. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65 Investigations for soil and groundwater cleanup. (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct

investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous release response actions);

(2) Free product is found to need recovery in compliance with section 11-280.1-64;

(3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and

(4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to section 11-280.1-65.2. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65.1 Notification of confirmed releases. (a) Within ninety days following confirmation of a release, the owner and operator shall notify those members of the public directly affected by the release in writing of the release and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

(1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and

(2) Other persons identified by the director.

(b) The owner and operator shall send a letter to all members of the public directly affected by the

release. Model language for the letter shall be provided by the department and shall include at least the following information:

(1) Name and address of the UST or UST system;

(2) Statement that a release of regulated substance has been confirmed at the UST or UST system;

(3) Name of a contact person at the department; and

(4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

(1) Name and address of the UST or UST system;

(2) Name and address of the owner and operator of the UST or UST system;

(3) Name, address, and telephone contact of the party performing the cleanup activities;

(4) Date of the confirmed release;

(5) Nature and extent of the confirmed release;

(6) Summary of measures taken to assess the release and extent of contamination; and

(7) Summary of the proposed response to the release.

(d) The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 the following information:

(1) Copy of the letter pursuant to subsection (b);

(2) List of the members of the public directly affected by the release and to whom the letter was sent; and

(3) Copies of the factsheet and amended factsheets pursuant to subsections (c) and

(d). [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65.2 Release response reporting. (a) No later than ninety days following the confirmation of a release, owners and operators must submit to the department a written report in the format specified by the department. The report must include:

(1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and

(2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit to the department written quarterly progress reports and an electronic copy of the written report in a format specified by the department. The reports must document:

(1) All response actions taken pursuant to this subchapter after the last reported date;

(2) A plan for future release response actions to be taken; and

(3) Information required pursuant to section 11-280.1-65.1.

(c) Quarterly progress reports are not required if:

(1) Response actions have met the requirements of section 11-280.1-65.3; and

(2) A final quarterly report has been submitted.

[Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

§11-280.1-65.3 Site cleanup criteria. (a) Owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by

releases from USTs or tank systems in a manner that is protective of human health and the environment and achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater, and surface water at the site to residual concentrations that meet one of the following criteria:

(1) Default Tier 1 Screening Levels as presented in Table 1 in subsection (e); or

(2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. Site-specific action levels must take into account the following factors:

(A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect during a lifetime or part of a lifetime, and incorporating an adequate margin of safety;

(B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between 10^{-4} and 10^{-6} using information on the relationship between dose and response. The 10^{-6} excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical-specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;

(C) Impacts to ecological receptors, including but not limited to plants and animals; and

(D) Other applicable requirements, including but not limited to nuisance concerns for odor and taste, if applicable.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1 Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis[1]	Soil (mg/kg)	Basis[2]	Groundwater (ug/l)	Basis[3]	Soil (mg/kg)	Basis[2]
Acenaphthene	N/A[4]	-	120	L/VI	N/A[4]	-	120	L/VI
Benzene	5.0	DWP	0.30	L	71	CAT	0.77	VI
Benzo(a)pyrene	N/A[4]	-	3.6	DE	N/A[4]	-	3.6	DE
Dichloroethylene, cis 1,2-	70	DWP	0.36	VI	620	CAT	0.36	VI
Dichloroethylene, trans 1,2-	100	DWP	3.6	VI	560	CAT	3.6	VI
Ethylbenzene	7.3	CAT	0.90	L	7.3	CAT	0.90	L
Fluoranthene	N/A[4]	-	87	L	N/A[4]	-	87	L
Lead	5.6	CAT	200	DE	5.6	CAT	200	DE
Methyl Tert Butyl Ether (MTBE)	5.0	DWS	0.028	L	730	CAT	2.3	VI
Naphthalene	12	CAT	3.1	L	12	CAT	3.1	L
Polychlorinated Biphenyls (PCBs)	N/A[4]	-	1.2	DE	N/A[4]	-	1.2	DE
Tetrachloethylene (PCE)	5.0	DWP	0.098	VI	53	CAT	0.098	VI
Toluene	9.8	CAT	0.78	L	9.8	CAT	0.78	L
TPH-gasolines	300	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	400	DWP	220	DE	640	CAT	220	DE
TPH-residual fuels	500	DWS	500	GC	640	CAT	500	GC
Trichloroethylene	5.0	DWP	0.089	VI	47	CAT	0.089	VI
Vinyl Chloride	2.0	DWP	0.036	VI	18	VI	0.036	VI
Xylenes	13	CAT	1.4	L	13	CAT	1.4	L

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").

2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").

3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), and gross contamination ("GC").

4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene, and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-66 Corrective action plan. (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

(1) Actual or probable release to groundwater which is a drinking water supply;
(2) Actual or probable release to surface water which is a drinking water supply;
(3) Actual or probable release to air that poses a threat to public health;

(4) Actual or probable release to and extensive contamination of soil that poses a direct contact hazard due to uncontrolled access;
(5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
(6) Actual or probable adverse impact to natural resources;
(7) Actual or probable imminent danger of fire or explosion; or
(8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:
(1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
(2) Hydrogeologic characteristics of the facility and the surrounding area;
(3) Proximity, quality, and current and future uses of nearby surface water and

groundwater;

(4) Potential effects of residual contamination on nearby surface water and groundwater;

(5) An exposure assessment; and

(6) All other information assembled in compliance with this subchapter.

(e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.

(f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-280.1-65.2.

(g) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:

(1) Notify the department of their intention to begin cleanup;

(2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-280.1-65.3;

(3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(4) Incorporate self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

[Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-67 Public participation for corrective action plans. (a) The department shall conduct public participation activities in accordance with subsections (c) through (h) when:

(1) A corrective action plan required pursuant to section 11-280.1-66(a) has been submitted and the department has made a tentative decision concerning the proposed plan; or

(2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given in the form of a letter from the department and shall include at least the following information:

(1) Name and address of the UST or UST system;

(2) Name and address of the owner and operator of the UST or UST system;

(3) Summary of the release information and the proposed or previously approved corrective action plan;

(4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;

(5) Announcement that an informational meeting will be held in accordance with subsection (g);

(6) Request for comments on the corrective action plan and the department's tentative decision; and

(7) Availability of information on the release and the department's tentative decision.

(d) Notice to the general public shall be given in the form of a notice in a local newspaper and shall include at least the information required in

subsection (c)(1) to (7).

(e) Comments shall be received by the department no later than thirty days after the notice provided in subsections (c) and (d) or after the end of the public meeting held pursuant to subsection (g), if any, whichever occurs later.

(f) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(g) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(h) At the director's discretion, a notice of final decision may be issued. [Eff] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§§11-280.1-68 to 11-280.1-69 (Reserved.)

SUBCHAPTER 7

OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

§11-280.1-70 Temporary closure. (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and overfill operation and maintenance testing and inspections in subchapter 3 are not required during

temporary closure. If the UST system is empty, release detection and release detection operation and maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-71 Permanent closure and changes-in-service. (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department in writing of their intent to permanently close or make the change-in-service, unless such action is in response to a confirmed release. The required

assessment of the excavation zone under section 11-280.1-72 must be performed after notifying the department but before completion of the permanent closure or change-in-service.

(b) At least seven days before excavation work for a permanent closure or change-in-service, owners or operators must notify the department of the exact date that the work will occur.

(c) To permanently close an UST or tank system, owners and operators must:

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;

(2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and

(3) Conduct a site assessment in accordance with section 11-280.1-72.

(d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and

(2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service, owners and operators must submit a notification to the department indicating completion of the closure or change-in-service. [Eff] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-72 Assessing the site at closure or change-in-service. (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where

contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-372)

§11-280.1-73 Applicability to previously closed UST systems. (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-74 Closure records. Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

§11-280.1-75 Closure--codes of practice. The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

(1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

(2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";

(3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

(4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", may be used as guidance for

compliance with this section;

(5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and

(6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space", may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§§11-280.1-76 to 11-280.1-89 (Reserved.)

SUBCHAPTER 8

FINANCIAL RESPONSIBILITY

§11-280.1-90 Applicability. (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c)(1), (c)(3), or (c)(4).

(d) If the owner and operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in

the event of noncompliance. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-91 (Reserved.)

§11-280.1-92 Definition of terms. When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) A 10-K report submitted to the U.S. Securities and Exchange Commission;

(2) An annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) Annual reports submitted to the Energy

Information Administration or the Rural Utilities Service.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(1) By EPA or the state to require release response action or to recover the costs of release response action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems which are covered by the policy.

"Provider of financial assurance" means an entity

that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp:

HRS §§342L-3, 342L-36)

§11-280.1-93 Amount and scope of required financial responsibility. (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: $1,000,000; and

(2) For all other owners or operators of petroleum USTs or tank systems: $500,000.

(b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

(1) For owners or operators of one to one hundred petroleum USTs: $1,000,000; and

(2) For owners or operators of one hundred one or more petroleum USTs: $2,000,000.

(c) For the purposes of subsections (b) and (f) only, "a petroleum underground storage tank" or "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective action;

(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least $2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-94 Allowable mechanisms and combinations of mechanisms. (a) Subject to the limitations of subsections (b) and (c):

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-280.1-95 through 11-280.1-103 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-280.1-104 through 11-280.1-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-280.1-96 or surety bond under section 11-280.1-98 to establish financial responsibility only if the State Attorney General has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-95 Financial test of self-insurance. (a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, must meet the

criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;

(B) The sum of the RCRA subtitle C corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101, 264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271; and

(C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under

40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10,000,000.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).

(4) The owner or operator, and/or guarantor, must either:

(A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements

cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (d).

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(B) In connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

	Amount
EPA Regulations:	

Closure (§§261.143, 264.143, and 265.143)	$
Post-Closure Care (§§264.145 and 265.145)	$
Liability Coverage (§§261.147, 264.147, and 265.147)	$
Corrective Action (§264.101(b))	$
Plugging and Abandonment (§144.63)	$
Authorized State Programs:	
Closure	$
Post-Closure Care	$
Liability Coverage	$
Corrective Action	$
Plugging and Abandonment	$
TOTAL	$

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

		Amount
1.	Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	$
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment	$

	costs covered by a financial test, or guarantee or both		
3.	Sum of lines 1 and 2	$	
4.	Total tangible assets	$	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$	
6.	Tangible net worth [subtract line 5 from line 4]	$	
7.	Is line 6 at least $10,000,000?	Yes	No
8.	Is line 6 at least ten times line 3?	Yes	No
9.	Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?	Yes	No
10.	Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration?	Yes	No
11.	Have financial statements for the latest fiscal year been filed with the federal Rural Utilities Service?	Yes	No
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer “Yes” only if both criteria have been met.]	Yes	No

ALTERNATIVE II

		Amount
1.	Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	$
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment	$

costs covered by a financial test, or guarantee or both

3.	Sum of lines 1 and 2	$	
4.	Total tangible assets	$	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$	
6.	Tangible net worth [subtract line 5 from line 4]	$	
7.	Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.]	$	
8.	Is line 6 at least $10,000,000?	Yes	No
9.	Is line 6 at least six times line 3?	Yes	No
10.	Are at least ninety per cent of assets locate No," complete line 11]	Yes	No
11.	Is line 7 at least six times line 3?	Yes	No

[Fill in either lines 12-15 or lines 16-18:]

12.	Current assets	$	
13.	Current liabilities	$	
14.	Net working capital [subtract line 13 from line 12]	$	
15.	Is line 14 at least six times line 3?	Yes	No
16.	Current bond rating of most recent bond issue		
17.	Name of rating service		
18.	Date of maturity of bond		
19.	Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange	Yes	No

Commission, the federal Energy Information Administration, or the federal Rural Utilities Service?

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(f) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the

requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-96 Guarantee. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that:
  (A) Possesses a controlling interest in the owner or operator;
  (B) Possesses a controlling interest in a firm described under subparagraph (A); or
  (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-280.1-95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-280.1-95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send

by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of section 11-280.1-95(b) or (c), and (d), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this

instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to

perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative

Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner

or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-96(c), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-97 Insurance and risk retention group coverage. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]
Address: [address of each covered location]
Policy Number:
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy;

if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) to (e) of this paragraph are hereby amended to conform with subsections (a) to (e);

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or

combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.

c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the

terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]
Address: [address of each covered location]
Policy Number:
Endorsement (if applicable):
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.

c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is

received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(2), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].

[Signature of authorized representative of Insurer]
[Type Name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus

lines insurer in the State of Hawaii. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-98 Surety bond. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Period of coverage:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert: "individual", "joint venture", "partnership", or "corporation"]
State of incorporation (if applicable):
Surety(ies): [name(s) and business address(es)]
Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury

and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].
Penal sums of bond:
Per occurrence $
Annual aggregate $
Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take

corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond

obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall

not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)
[Name and address]
State of Incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond

to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-99 Letter of credit. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the State of Hawaii and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of

chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay

damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-280.1-99(b), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section

11-280.1-93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-100 to 11-280.1-101 (Reserved.)

§11-280.1-102 Trust fund. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in section 11-280.1-103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in

section 11-280.1-103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s)that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-103 Standby trust fund. (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b)(l) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert: "corporation", "partnership", "association", or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert: "Incorporated in the State of ____" or "a national bank"], the "Trustee".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert "standby" where trust agreement is standby trust agreement] trust agreement;

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the

Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary

to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of

the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures and/or third-party liability claims, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and

discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the

Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary,

that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Hawaii director of health, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to

provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-280.1-103(b)(1), Hawaii Administrative Rules, as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of the Witness]
[Title]
[Seal]

(2) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

State of ___
County of ___

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-104 Local government bond rating test.

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of general obligation bonds of $1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of revenue bonds of $1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant

information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings

published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]

[Name]
[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-105 Local government financial test. (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of subsection (b)(2) and (3) based

on year-end financial statements for the latest completed fiscal year.

(b) (1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including

enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

(D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(E) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total

funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(F) Population consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from

operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues
   a. Revenues (dollars)
      Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
   b. Subtract interfund transfers (dollars)
   c. Total Revenues (dollars)
2. Total Expenditures

a. Expenditures (dollars)
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
b. Subtract interfund transfers (dollars)
c. Total Expenditures (dollars)

3. Local Revenues
a. Total Revenues (from 1c) (dollars)
b. Subtract total intergovernmental transfers (dollars)
c. Local Revenues (dollars)

4. Debt Service
a. Interest and fiscal charges (dollars)
b. Add debt retirement (dollars)
c. Total Debt Service (dollars)

5. Total Funds (Dollars)
(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population
a. Total Revenues (from 1c)
b. Population (from 6)
c. Divide 7a by 7b
d. Subtract 417
e. Divide by 5,212
f. Multiply by 4.095

8. Total Expenses to Population
a. Total Expenses (from 2c)
b. Population (from 6)
c. Divide 8a by 8b
d. Subtract 524
e. Divide by 5,401
f. Multiply by 4.095

9. Local Revenues to Total Revenues
   a. Local Revenues (from 3c)
   b. Total Revenues (from 1c)
   c. Divide 9a by 9b
   d. Subtract 0.695
   e. Divide by 0.205
   f. Multiply by 2.840
10. Debt Service to Population
   a. Debt Service (from 4c)
   b. Population (from 6)
   c. Divide 10a by 10b
   d. Subtract 51
   e. Divide by 1,038
   f. Multiply by -1.866
11. Debt Service to Total Revenues
   a. Debt Service (from 4c)
   b. Total Revenues (from 1c)
   c. Divide 11a by 11b
   d. Subtract 0.068
   e. Divide by 0.259
   f. Multiply by -3.533
12. Total Revenues to Total Expenses
   a. Total Revenues (from 1c)
   b. Total Expenses (from 2c)
   c. Divide 12a by 12b
   d. Subtract 0.910
   e. Divide by 0.899
   f. Multiply by 3.458
13. Funds Balance to Total Revenues
   a. Total Funds (from 5)
   b. Total Revenues (from 1c)
   c. Divide 13a by 13b
   d. Subtract 0.891
   e. Divide by 9.156
   f. Multiply by 3.270
14. Funds Balance to Total Expenses
   a. Total Funds (from 5)
   b. Total Expenses (from 2c)
   c. Divide 14a by 14b
   d. Subtract 0.866
   e. Divide by 6.409
   f. Multiply by 3.270

15. Total Funds to Population
    a. Total Funds (from 5)
    b. Population (from 6)
    c. Divide 15a by 15b
    d. Subtract 270
    e. Divide by 4,548
    f. Multiply by 1.866
16. Add 7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-

end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-106 Local government guarantee. (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) Demonstrate that it meets the bond rating test requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-104(d) and (e) to the local government owner or operator;

(2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or

(3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice

to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) The local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the

local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the Hawaii department of health has determined or suspects that a

release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or

involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability

in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(d), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(e) The local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the

local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred

at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which

[insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(e), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

[Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-107 Local government fund. A local government owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action

and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-280.1-93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-

year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, or

(B) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant

information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner

or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section 11-280.1-107(3), Hawaii Administrative Rules, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period:]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

[Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator. (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-280.1-93.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance. (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the

notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-280.1-114, the owner or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-110 Reporting by owner or operator. (a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

(1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section 11-280.1-53 or 11-280.1-61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within thirty days after the

owner or operator receives notice of:

(A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;

(B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(C) Failure of a guarantor to meet the requirements of the financial test; or

(D) Other incapacity of a provider of financial assurance; or

(3) As required by sections 11-280.1-95(g) and 11-280.1-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form submitted pursuant to section 342L-30, Hawaii Revised Statutes, section 11-280.1-34, or the permit applications under sections 11-280.1-324 and 11-280.1-326.

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-111 Recordkeeping. (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank or tank system site or the owner's or operator's place of

work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 11-280.1-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under section 11-280.1-104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under section 11-280.1-106, where the guarantor's demonstration of financial responsibility

relies on the bond rating test under section 11-280.1-104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator using a local government fund under section 11-280.1-107 must maintain the following documents:

(A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;

(B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and

(C) If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 11-280.1-107(3)(A), or attestation by the state attorney general as specified under section 11-280.1-107(3)(B)).

(9) A local government owner or operator using

the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(10) (A) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

(B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff]
(Auth: HRS §§342L-3, 342L-7.5, 342L-36)
(Imp: HRS §§342L-3, 342L-7.5, 342L-36)

§11-280.1-112 Drawing on financial assurance mechanisms. (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(B) The director determines or suspects that a release from an underground storage tank or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapter 5 or 6 of a release from an underground storage tank or tank system covered by the mechanism; or

(2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The director may draw on a standby trust fund when:

(1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 6; or

(2) The director has received either:

(A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF A VALID CLAIM

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary)
Date

[Signatures]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary)
Date

or;

(B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.

(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b)(2)(A), and valid court orders under subsection (b)(2)(B).

(d) A governmental entity acting as guarantor under section 11-280.1-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-113 Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under this subchapter for an

underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance. (a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-96.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as

required under the terms of the guarantee specified in section 11-280.1-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds. (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required; or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-280.1-93. If a combination of mechanisms was used to provide the

assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-116 to 11-280.1-199 (Reserved.)

SUBCHAPTER 9

LENDER LIABILITY

§11-280.1-200 Definitions. (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, and 10 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or

deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum UST or UST system or in the

facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-201 to 11-280.1-209 (Reserved.)

§11-280.1-210 Participation in management. (a)

The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

(1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or

administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do

not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(A) Policing the security interest or loan.

(i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition

during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(B) Loan work out. A holder who engages in work out activities prior to

foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this

subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after foreclosure.

(B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease

financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c)(2). A holder that outbids, rejects, or fails to act upon a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

(A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act

diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a

lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local

law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.

(ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of

the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11- 280.1-210(a) and 11-280.1-230. Such

allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-211 to 11-280.1-219 (Reserved.)

§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located. Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

(1) Does not participate in the management of the UST or UST system as defined in section

11-280.1-210; and

(2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-221 to 11-280.1-229 (Reserved.)

§11-280.1-230 Operating an underground storage tank or underground storage tank system. (a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.

(2) If another operator does not exist, as

provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:

(A) Empties all of its known USTs and UST systems within sixty calendar days after foreclosure, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under paragraph (2), the holder must either:

(A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or

(B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:

(i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;

(ii) Report suspected releases to the department; and

(iii) Conduct a site assessment in accordance with section 11-280.1-72(a) if the UST system is temporarily closed for more than twelve months and the UST system does not meet the applicable system design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-231 to 11-280.1-239 (Reserved.)

SUBCHAPTER 10

OPERATOR TRAINING

§11-280.1-240 General requirement for all UST systems. All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-241 Designation of Class A, B, and C operators. (a) UST system owners and operators must designate:

(1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and

(2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators for each UST or tank system in use or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a Class A or Class B operator. The notification must include the name of each operator, the date training was completed, the name

and address of each facility where the USTs or tank systems for which the operator has been designated is located, and written verification from a training program approved or administered by the department that the Class A and Class B operator for each UST or tank system has successfully completed operator training in the operator's class. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-242 Requirements for operator training. UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

(1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).

(A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:

(i) Spill and overfill prevention;

(ii) Release detection;

(iii) Corrosion protection;

(iv) Emergency response;

(v) Product and equipment compatibility and demonstration;

(vi) Financial responsibility;

(vii) Notification and permitting;

(viii) Temporary and permanent closure;

(ix) Reporting, recordkeeping, testing, and inspections;

(x) Environmental and regulatory consequences of releases; and

(xi) Training requirements for Class B

and Class C operators.

(B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph (A).

(2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance with paragraph (5).

(A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:

(i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;

(ii) Spill and overfill prevention;

(iii) Release detection and related reporting;

(iv) Corrosion protection;

(v) Emergency response;

(vi) Product and equipment compatibility and demonstration;

(vii) Reporting, recordkeeping, testing, and inspections;

(viii) Environmental and regulatory consequences of releases; and

(ix) Training requirements for Class C operators.

(B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge

and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).

(3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a comparable examination, in accordance with paragraph (5).

(A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

(B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.

(4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.

(5) Comparable examination. A comparable

examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by the department to be equivalent to the requirements of this section. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-243 Timing of operator training. (a) An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after the effective date of these rules must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after the effective date of these rules must be trained before assuming duties of a Class C operator. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-244 Retraining. (a) Class A and class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable

examination must be developed or administered by the department or an independent organization. An UST or tank system is out of compliance if the system:

(1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429; or

(2) Is in significant violation of other requirements, such as temporary or permanent closure, tank registration, or financial responsibility, as determined by the director.

(c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance except in one of the following situations:

(1) Class A and Class B operators take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;

(2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-245 Documentation. Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

(1) The list must:

(A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and

(B) Include names, class of operator

trained, date assumed duties, date each completed initial training, and any retraining.

(2) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

(A) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;

(B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and

(C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.

[Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§§11-280.1-246 to 11-280.1-249 (Reserved.)

SUBCHAPTER 11

(RESERVED.)

§§11-280.1-250 to 11-280.1-299 (Reserved.)

SUBCHAPTER 12

PERMITS AND VARIANCES

§§11-280.1-300 to 11-280.1-322 (Reserved.)

§11-280.1-323 Permit required. (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, Hawaii Revised Statutes, and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-31)

§11-280.1-324 Application for a permit. (a) Every application for a permit shall be submitted to

the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section 11-280.1-335 shall accompany each application for a permit.

(c) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

(1) General information on involved parties, including the landowner, UST owner, and UST operator; location of the property (including TMK); and basic description of the UST or tank system;

(2) Age, size, precise location within the property, and use of each UST;

(3) Other information required in the form prescribed by the director; and

(4) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgment that the applicants assume responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

(1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;

(2) In the case of a partnership, a general partner;

(3) In the case of a sole proprietorship, the proprietor; or

(4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff] (Auth: HRS §§342L-3,

342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-30, 342L-31)

§11-280.1-325 Permit. (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must completed and submitted. The certification of installation must certify compliance with the following requirements:

(1) Installation of tanks and piping under section 11-280.1-20(f);

(2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);

(3) Financial responsibility under subchapter 8; and

(4) Release detection under sections 11-280.1-41 and 11-280.1-42.

(e) The department, where practicable and

appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-326 Permit renewals. (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed by the director. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-327 Action on and timely approval of an application for a permit. (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

(1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
(2) All fees have been paid as prescribed in section 11-280.1-335; and
(3) The director determines that the application

is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or a permit renewal, modification, or transfer, required under this chapter. The director shall notify the applicant of the director's decision within one hundred eighty days of receipt of a complete application, as defined in subsection (a). Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-328 Permit conditions. The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-329 Modification of permit. (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

(1) The addition or removal of an UST from an UST system; and

(2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff] (Auth: HRS §342L-3)(Imp: HRS §§342L-4, 342L-31)

§11-280.1-330 Revocation or suspension of permit. The director may revoke or suspend a permit if the director finds any one of the following:

(1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;

(2) The permittee violated a condition of the permit; or

(3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-331 Change in owner or operator for a permit. (a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-30, 342L-31)

§11-280.1-332 Variances allowed. Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

§11-280.1-333 Variance applications. (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

(b) A variance fee in accordance with section 11-280.1-335 shall accompany each application for a variance.

(c) Every application shall be signed by the owner and operator, and the signature shall be by one of the following:

(1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;

(2) In the case of a partnership, by a general partner;

(3) In the case of a sole proprietorship, by the proprietor; or

(4) In the case of a county, state, or federal entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and 342L-6, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

§11-280.1-334 Maintenance of permit or variance. (a) Permits and variances, including application records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall wilfully deface, alter,

forge, counterfeit, or falsify any permit or variance. [Eff] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7, 342L-31)

§11-280.1-335 Fees. (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	$300	$400
Application to modify	$200	$300
Application for renewal	$100	$200
Application for transfer	$50	NA

(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

§§11-280.1-336 to 11-280.1-399 (Reserved.)

SUBCHAPTER 13

ENFORCEMENT

§§11-280.1-400 to 11-280.1-420 (Reserved.)

§11-280.1-421 Purpose. The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

§11-280.1-422 Field citations. (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department deems appropriate for resolution through the issuance of a field citation. Nothing in this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to respond.

(d) By returning the signed settlement agreement

attached to the field citation and payment of the proposed settlement amount to the department, the owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

§§11-280.1-423 to 11-280.1-428 (Reserved.)

§11-280.1-429 Delivery, deposit, and acceptance prohibition. (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of ineligibility onto the fill pipe of the ineligible UST or tank system. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur only after the department confirms that the conditions giving rise to the delivery prohibition have been corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this

section, or as soon as practicable.

(d) Pursuant to this section, a tag or other notice of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

(1) Operating without a permit issued by the department;

(2) Operating inconsistently with one or more conditions of a permit issued by the department;

(3) Required spill prevention equipment is not installed or properly functioning or maintained;

(4) Required overfill protection equipment is not installed or properly functioning or maintained;

(5) Required release detection equipment is not installed or properly functioning or maintained;

(6) Required corrosion protection equipment is not installed or properly functioning or maintained;

(7) Failure to maintain financial responsibility; or

(8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request for a hearing by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure." [Eff] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)

3. The repeal of chapter 11-281 and the adoption of chapter 11-280.1, 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 June 22, 2018, and filed with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director of Health

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

IV. Old Business

B. Discussion and Action on the Small Business Statement After Public Hearing on the Proposed Amendments to HAR Title 19 Chapter 20.1 **Commercial Services at Public Airports**, promulgated by DOT

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

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

Department or Agency: Department of Transportation, Airports Division

Administrative Rule Title and Chapter: 91-20.1, HAR

Chapter Name: Commercial Services at Public Airports

Contact Person/Title: Ross H. Higashi, Deputy Director of Transportation (Airports)

Phone Number: (808) 838-8602

E-mail Address: ross.higashi@hawaii.gov **Date:** July 10, 2018

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.) https://hidot.hawaii.gov/airports/files/2018/04/HAR-Chapter-19-20.1-Proposed-Amends-RAMSEYER-2018-PRE-HEARING-SIGNED.pdf .

(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.)

* * *

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

At the recommendation of the SBRRB, the DOT held a consultation meeting on May 10 with representatives from existing small businesses in order to better understand how the proposed rule amendments must ensure fairness and a level playing field for all, and how to eliminate double-standards in the permitting process with regard to the use of company logos and trade dress (instead of DOT-issued decals and transponders) and consistent insurance requirements.

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

There were no recommendations from small businesses on specific amendments to the rule language, but the DOT did re-draft the rule amendments to address the issues above that were raised by impacted small businesses.

II. 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.

At the recommendation of the SBRRB, the DOT held a consultation meeting on May 10 with representatives from existing small businesses in order to better understand how the proposed rule amendments must ensure fairness and a level playing field for all, and how to eliminate double-standards in the permitting process with regard to the use of company logos and trade dress (instead of DOT-issued decals and transponders) and consistent insurance requirements.

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

In the public hearings, 51 of the 61 testifiers and 119 of the 120 written testimonies expressed support for the amendments that allow for TNCs to operate at public airports. Nearly all in support identified themselves as TNC drivers, and TNC drivers are independent contractors who meet the definition of a "small business." The testifiers who did not support the amendments identified themselves as affiliated with a small business and generally raised concerns about TNC operations and the need for fairness across operations. In several cases, the comments addressed matters outside the scope of the rule amendments.

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

The majority of the testimony received is consistent with DOT observations of its TNC pilot program which has run since late 2017. DOT considers the proposed amendments fair and no prearranged transportation company that operates at any public airport should not be unfairly burdened once the rules are in effect and implemented. Further, DOT reiterates that the scope of these rules only includes the public airports and the DOT cannot address concerns raised that are under the purview of other agencies.

4. The number of persons who:
   (i) Attended the public hearing: 109

   (ii) Testified at the hearing: 61

   (iii) Submitted written comments: 120

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

Two TNCs requested a series of amendments to clarify the intent of the rules and to clarify the roles and DOT expectations of the prearranged ground transportation company ("permittee") and the person/driver/contractor actually providing the transportation service. A few of the changes were adopted, and as independent contractors are considered "small businesses" their operations will be governed by these changes.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at: http://dbedt.hawaii.gov/sbrrb-impact-statements-pre-and-post-public-hearing

Amendment and Compilation of Chapter 19-20.1
Hawaii Administrative Rules

July 3, 2018

1. Chapter 19-20.1, Hawaii Administrative Rules, entitled "Commercial Services at Public Airport", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 2

AIRPORTS DIVISION

CHAPTER 20.1

COMMERCIAL SERVICES AT PUBLIC AIRPORT

Subchapter 1 General Provisions

Subchapter 2 Aircraft Ground Handling

Subchapter 3 Baggage Pickup and Delivery

Subchapter 4 Commercial Photography

Subchapter 5 Greeting Services for Hire

Subchapter 6 In-flight Catering

Subchapter 7 Merchandise Delivery

Subchapter 8 Porter Services

Subchapter 9 Prearranged Ground Transportation

SUBCHAPTER 1

GENERAL PROVISIONS

§19-20.1-1 Applicability. This chapter shall apply to the following types of commercial services permitted at or in public airports:

(1) Aircraft ground handling;
(2) Baggage pickup and delivery;
(3) Commercial photography;
(4) Greeting services for hire;
(5) In-flight catering;
(6) Merchandise delivery;
(7) Porter services; and
(8) Prearranged ground transportation.

[Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-2 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Aircraft" means airplanes, airships, dirigibles, helicopters, gliders, amphibians, seaplanes and any other contrivance now or hereafter used for the navigation of or flight in air space.

"Airline lessee" means any aircraft operator that has entered into a lease with the department for the use of land or facilities at a public airport.

"Air operations area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas; maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

"Department" means the department of transportation of the State.

"Director" means the director of the department of transportation or his duly authorized representative.

"Gross receipts" includes all moneys paid or payable to the permittee or person providing or facilitating one of the commercial services, specified in section 19-20.1-1, at a public airport, regardless of whether the order, reservation or payment for the commercial service is made within or without the public airport. The term "gross receipts" excludes any general excise taxes upon a consumer or tips collected by the person providing the commercial service at a public airport. (For prearranged ground transportation services, the term "gross receipts" also excludes applicable government taxes or fees, public service company taxes, commissions to travel agents, revenues from arrival sightseeing [~~enroute~~] en route to the hotel in excess of two hours or its equivalent, and receipts reportable under other commercial service permits, provided all such exclusions are segregated and identified in the accounting process of the permittee or person providing or facilitating prearranged ground transportation services at a public airport.)

"Passenger" means any person who arrives or departs from a public airport aboard an aircraft except for persons comprising the flight crew of the aircraft.

"Permittee" means any person authorized to provide or facilitate any of the commercial services, specified in section 19-20.1-1, in or at a public airport under a permit or other written authorization from the director.

"Person" means any individual, firm, partnership, corporation, trust, association, company, joint venture, or any other legal entity [~~(including any assignee, receiver, trustee, employee, or similar representative)~~] and collectively its respective authorized employees, contractors, assignees,

receivers, trustees, agents, or other similar representative.

"Public airport" means that area of land and water under governmental jurisdiction which is used for landing and taking-off of aircraft, any appurtenant areas which are used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; to seek actively though silently; or to try to obtain.

"State" means the State of Hawaii.

[Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-3 Permit or authorization required. Any person providing or facilitating any of the commercial services specified in section 19-20.1-1 in or at a public airport shall do so only upon receipt of a permit or other written authorization from the director which shall be issued upon payment of the applicable fees. A permit shall not be assigned or otherwise transferred. A permit shall not be issued to applicants who are in arrears in the payment of taxes, fees or other charges to state agencies. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-4 Payment of fees. (a) The required fees for each type of commercial services are specified in the applicable subchapter.

(b) Time of payment.

(1) Annual fees shall be paid annually in advance of providing or facilitating commercial services at or in public airports; and

(2) Monthly fees (including percentage fees) shall be paid on or before the twentieth day of the succeeding month.

(c) Any amount payable which is not paid when due shall bear interest at the rate of one percent per month or the maximum rate of interest allowable by law.

(d) Payments due under this chapter shall be made at or sent to the airports division, department of transportation, [~~Honolulu~~] Daniel K. Inouye International Airport, Honolulu, Hawaii 96819; or any of its offices located at Hilo International Airport, Hilo, Hawaii 96720; Ellison Onizuka Kona International Airport at Keahole, Kailua-Kona, Hawaii 96740; Kahului Airport, Kahului, Hawaii 96732; or Lihue Airport, Lihue, Hawaii 96766. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-5 Records; audit of records; reports. (a) This section shall apply to permittees who are required to pay percentage fees.

(b) The permittee shall maintain up-to-date records and books in accordance with a recognized system of bookkeeping and such records and books shall reflect a segregation of airport revenue in the general ledger, reconciled and supported by original source documents. Such records including original source documents shall be kept for three years in the state following the end of the permit year.

(c) The State shall be granted access, at all reasonable times, to all books, accounts, records and reports including gross income tax reports and data from a digital network or software application service, as defined in section 19-20.1-55 and as required by section 19-20.1-62, showing daily receipts; and at any reasonable time on twenty-four hours' notice the permittee will permit a complete audit to be made by the State's accountant or by a certified public accountant of the permittee's entire business affairs and records relating to the business

conducted at, from or in connection with the airport for the term of the permit. The permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the State's accountant or by a certified public accountant disclose that fees have been underpaid by two percent or more for any period under examination, the State shall, in addition to the remedies provided in subsection (e) of this section, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the State's accountant or by a certified public accountant shall disclose that fees have been underpaid by five percent or more for the period under examination, the state shall, in addition to the foregoing rights, have the right, upon ten days' notice, to revoke the authorization to conduct the applicable commercial service at public airports.

(d) The permittee shall, on or before the twentieth day of the succeeding month, file with the director, on forms prescribed by the director, a report of its gross receipts for the previous month certified to by a qualified representative of the permittee; the certifier shall state that it has examined the books, records, and other evidence of the gross receipts of the permittee for the period reported and that to its knowledge the statement is true and correct. The statement shall be in such form and contain such details and breakdowns as the State may require. Payment of requisite fees shall be submitted with the report. Any amount payable which shall not have been paid when due shall bear interest at the rate of one percent per month

(e) Without prejudice and in addition to any other remedies the State may have for such default, if the permittee shall fail to promptly furnish any monthly report, the State may have such report prepared by an accountant to be selected by the State, at the expense and on behalf of the permittee. The permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the permittee shall pay to the State all expenses

incurred by the State in securing such reports. Furthermore, the State may select procedures which would produce a reasonable gross receipts expectation, and assess percentage fees based upon gross receipts so computed. In the event that records have not been prepared and kept in accordance with this chapter, the State shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent of the gross receipt fee for the periods involved. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-6 Insurance. (a) [~~The permittee shall maintain and keep in force adequate insurance as determined by the director to protect both the department and the permittee against claims for public liability and property damage.~~] The permittee shall maintain and keep in force adequate insurance as determined by the applicable state or county insurance law, or as otherwise determined by the director at all times when a permittee is at a public airport in connection with providing a commercial service or actually providing or facilitating a commercial service. The insurance shall serve to protect both the department and the permittee against claims for public liability and property damage. The current insurance requirements shall be posted at each Airports Division district office. The following types of insurance are required, as applicable:

(1) Automobile liability insurance. To provide coverage against all losses arising out of the person's operation of the registered vehicles, including motorized passenger carts, on airport premises and resulting in injury to persons or damage to property. (Commercial photography and greeting services for hire permittees are exempt from this requirement.)

(2) Comprehensive general liability policy; owners, landlords and tenants or manufacturers and contractors liability policy. To provide coverage against claims arising out of the person's operation on airport premises resulting in injury to persons or damage to property.

(b) The permittee shall provide the department with a certificate of insurance naming the permittee as the insured and the department as additional insured to the extent of liability arising out of the named insured's operations at the public airport with a [~~thirty day~~] thirty-day advance notice of material changes in coverage or cancellation. Upon demand by the department, the permittee or any person applying for a permit shall produce the insurance policy for inspection. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-7 Entry to air operations area. Except as may be authorized by the director, no person providing or facilitating commercial services at any public airport shall be permitted entry into the air operations area. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-8 Airport activity. (a) Each permittee's activity shall be limited to the area designated by the director. The director may change the designated areas when such action is deemed necessary and in the best interest of safety to persons or property.

(b) [~~The permittee~~] All permittees and persons shall:

(1) Maintain its designated activity area in a safe and clean condition in compliance with all applicable statutes, laws, ordinances, rules and regulations;

(2) Be liable for the fair value of any janitorial or maintenance service for cleaning or repairing airport premises necessitated by the permittee's failure to properly and adequately maintain its designated area;

(3) Conduct business in an orderly, courteous and businesslike manner;

(4) Be suitably dressed or uniformed[~~.~~], as applicable;

(5) Furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and will charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that the permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers; and

(6) Wear the identification badge (issued under this chapter) in plain sight, while at the airport[~~.~~], as applicable.

(c) The following provisions shall apply to permittees who are authorized to operate vehicles [~~under a permit~~] at a public airport in connection with providing a commercial service authorized by this chapter:

(1) [~~The permittee~~] All permittees and persons shall keep all vehicles and equipment used at any public airport in good mechanical condition, clean and suited for their designated use. The department may [~~disappove~~] disapprove the use by the permittee of any vehicle or equipment which the department deems unsafe or unsuitable for its designated use.

(2) [~~All vehicles operating under a permit~~] All permittees authorized to operate a vehicle at a public airport by this chapter shall be licensed by the state public utilities commission or appropriate governmental regulatory agency, if so required, and at

all times display a current safety inspection sticker and current evidence of licensing as required by the applicable regulatory agency of the government.

(3) The department shall issue decals which shall be placed by the permittee on those vehicles utilized at a public airport that meet the requirements of the department. No vehicle shall be used to provide commercial services authorized by this chapter at any public airport without a decal issued by the department. [~~Vehicles shall be parked only at locations designated by the director for the permitted activity. Vehicles issued decals shall not be used at any public airport for any purpose other than the activity authorized by the permit.~~] Prearranged ground transportation permittees shall be exempt from this requirement, but shall be subject to the requirements set forth in section 19-20.1-62.

(4) All permittees authorized to operate a vehicle at a public airport by this chapter shall do so only for the activity authorized and only at the locations designated by the director for the specified activity. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-9 Revocation of permit; termination. A permit issued under this chapter may be revoked by the department for violation of this chapter, upon ten days prior written notice. The permit may be terminated without cause by the department or by the permittee upon thirty days prior written notice. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-10 Subordination to sponsor's assurance agreement. A permit shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United States of America, which is in force during the term of the permit. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-11 Indemnification and hold harmless. The permittee shall indemnify, defend and hold harmless the department and the State from [~~any action or claim~~] all claims for damages or compensation arising out of the use of the permit or the airport. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-12 Severability. The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-13 Enforcement. This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-14 Penalty. Penalties for violations of this chapter shall be as set forth in section 261-

21, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 2

AIRCRAFT GROUND HANDLING

§19-20.1-15 Scope. The special provisions set forth in this subchapter shall apply to aircraft ground handling services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-16 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Aircraft ground handling services" shall include the following services performed for arriving or departing aircraft:

(1) Ramp services, including but not limited to, providing passenger or crew stairs, ground power units, baggage, mail and cargo loading and unloading, air start units, aircraft pushback and towing, air conditioning or heating equipment, and fueling;
(2) Aircraft cabin cleaning, including, but not limited to, interior cleaning service, lavatory service, and drinking water service;
(3) Passenger services, including, but not limited to, reservations, ticketing, seat selection, passenger check-in, document processing, passenger boarding, and VIP lounge services;
(4) Cargo handling, including, but not limited to, warehousing, document processing, cargo

buildup or breakdown, loading or unloading, and transportation;

(5) Aircraft maintenance, including, but not limited to, maintenance, and preventive maintenance; and

(6) Aircraft flight planning and flight dispatch service.

"Aircraft ground services operators" means all persons authorized to perform aircraft ground handling services at public airports and includes permittees, airline lessees, and airport lessees.

"Airport lessee" means any person other than an airline lessee that has entered into a lease with the department for the use of land or facilities at a public airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-17 Fee. Any person authorized to provide aircraft ground handling services shall, in consideration of using state facilities for conducting business, pay the department an annual administrative expense fee of $100. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-18 Exemption. Airport or airline lessees authorized by their lease to provide aircraft ground handling services for others at a public airport are exempt from the permit and fee requirements under this chapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-19 Statement of contracted services. The permittee shall provide to the department upon request a statement certified by the serviced airline

that a contract for aircraft ground handling services presently exists. This chapter shall become a part of all such contracts to which it applies, and shall be attached to the contracts so that contracting parties are aware of the rights, duties, and responsibilities of the permittee. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 3

BAGGAGE PICKUP AND DELIVERY

§19-20.1-20 Scope. The special provisions set forth in this subchapter shall apply to baggage pickup and delivery services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-21 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Baggage pickup and delivery services" means (1) the prearranged pickup of unaccompanied baggage at a public airport and delivery to a destination outside the airport for the benefit of an arriving passenger, or another on behalf of the passenger or (2) the prearranged delivery of unaccompanied baggage from a location outside a public airport to a certain location at or in a public airport which is designated for that purpose by the airport manager for a departing passenger, or for another on behalf of a departing passenger, or (3) the prearranged transfer of unaccompanied baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) the prearranged transfer of unaccompanied baggage from curbside or other areas within the public airport to check-in counters or

other areas within the public airport where transfer services were arranged for in advance by the passenger or another on behalf of the passenger.

"Unaccompanied baggage" means that baggage which is unclaimed by the passenger at a public airport but for which prior arrangements have been made (1) by or on behalf of an arriving passenger for the pickup of such baggage from the public airport and delivery to a destination outside the public airport, (2) by or on behalf of a departing passenger for the delivery of such baggage from a location outside the public airport to a certain location at or in the public airport which is designated for that purpose by the airport manager, (3) to transfer such baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) to transfer such baggage from curbside or other areas within the public airport to check-in counters or other areas within the public airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-22 Fees. Any person providing baggage pickup and delivery services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

(1) For each public airport at which baggage pickup and delivery services are provided, an annual administrative expense fee of $100.

(2) A percentage fee equal to three and one-half percent of the monthly gross receipts derived by the permittee, from or in connection with providing baggage pickup and delivery services in or at any public airport. The permittee's gross receipts shall include all consideration or compensation, of any kind or nature whatsoever, paid by passengers, customers

and clients to the permittee or to any person who is employed by or has a working arrangement with the permittee for providing baggage pickup and delivery services.

(3) An annual identification badge fee of $5 per badge.

(4) An annual registration fee of $50 for each vehicle in excess of five vehicles registered by a permittee at a public airport for baggage pickup and delivery services. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-23 Restrictions. (a) The permittee shall:

(1) Refrain from the use of profanity, boisterous or rough and disturbing behavior or actions, unsafe use of baggage carts or other equipment, and the playing of radios, prerecorded tapes or discs, or other musical instruments or devices in public areas or areas in which the sounds from such activities may intrude upon public areas;

(2) Not provide any of the services authorized by the permit, including the placement and use of any vehicle or equipment, in such a manner as to disturb other airport tenants or users; and

(3) Not solicit gratuities or business in the conduct of baggage pickup and delivery services at public airports.

(b) All business activities conducted by the permittee at any public airport, unless otherwise authorized by the department, shall be limited to those passengers and clients who have made prior arrangements for baggage pickup and delivery service with the permittee. The permittee shall have evidence of such prior arrangements in the form of schedules, passenger manifests, or other similar documentation which identifies the passengers and clients, available

for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups, deliveries and transfers. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 4

COMMERCIAL PHOTOGRAPHY

§19-20.1-24 Scope. The special provisions set forth in this subchapter shall apply to commercial photography services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-25 Definition. Unless the context clearly indicates otherwise, as used in this chapter:

"Commercial photography" means the taking of still or motion pictures of persons and things by a person for (1) sale for a monetary or any other valuable consideration, or (2) for any other commercial purpose. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-26 Fees. Any person providing commercial photography services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees (as applicable):

(1) For each public airport at which commercial photography services is provided, an annual administrative expense fee of $100.

(2) An annual identification badge fee of $5 per badge;
(3) A percentage fee equal to ten percent of the person's monthly gross receipts derived from providing commercial photography services at public airports;
(4) A daily fee of $100 in advance for persons providing commercial photography services on a short-term basis. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-27 Soliciting prohibited. To solicit, offer and provide commercial photography to any person other than to any person for whom commercial photography has been arranged in advance, as provided above, is prohibited. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-28 News media exempt. Commercial photography as defined herein shall not apply to representatives of newspapers, magazines, television stations, or other news media. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 5

GREETING SERVICES FOR HIRE

§19-20.1-29 Scope. The special provisions set forth in this subchapter shall apply to greeting services for hire at public airports. [Eff 5/4/02;

comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-30 Definition. Unless the context clearly indicates otherwise, as used in this chapter:

"Greeting services for hire" means the service of providing, on behalf of or at the request of another person, meeting, welcoming, receiving, salutation, meeting with salutation, farewell or departure services, with or without the bestowal of leis, floral arrangements or other gifts, to airline passengers. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-31 Fees. Any person providing greeting services for hire in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

(1) For each public airport at which greeting services for hire are provided an annual administrative expense fee of $100;
(2) An annual identification badge fee of $5 per badge; and
(3) A percentage fee equal to three percent of the person's monthly gross receipts derived from providing greeting services for hire at a public airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-32 Soliciting prohibited. To solicit, offer and provide greeting services for hire to any person other than to any person for whom greeting services had been arranged in advance, as provided, is

prohibited. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 6

IN-FLIGHT CATERING

§19-20.1-33 Scope. The special provisions set forth in this subchapter shall apply to in-flight catering services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-34 Definition. Unless the context clearly indicates otherwise, as used in this chapter:

"In-flight catering services" means the delivery of prepared and packaged food beverages at any public airport for consumption aboard an aircraft while in flight. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-35 Fees. Except for the concessionaries and airline lessees authorized to provide in-flight catering services at public airports, any person providing in-flight catering services in or at public airports shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

(1) An annual administrative expense fee of $100 in advance of providing in-flight catering services at a public airport; and

(2) A percentage fee equal to three and one-half per cent of its monthly gross receipts

derived from in-flight catering services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 7

MERCHANDISE DELIVERY

§19-20.1-36 Scope. The special provisions set forth in this subchapter shall apply to merchandise delivery services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-37 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Merchandise" means items, such as fresh fruits, flowers, candies, meat products and ice cream, which are:

(1) Sold to an airline passenger or the passenger's agent at a location other than a public airport; and

(2) Delivered to that passenger or that passenger's agent at the airport by the seller or the seller's agent.

Duty free or in-bond goods are specifically excluded from this definition.

"Piece" means the unit in which the merchandise is packaged for an individual airline passenger.

"Time of delivery" means the time the merchandise is delivered into one of the areas designated by the director. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-38 Fees. Any person providing merchandise delivery services in or at a public airport, in consideration of using state airport facilities for conducting business, shall pay the following fees:

(1) An annual administrative expense fee of $100 for each public airport at which merchandise is delivered.

(2) Except for the first vehicle, an annual fee of $200 for each vehicle thereafter upon registration of the vehicle with the department and issuance of decal pursuant to this subchapter.

(3) A monthly fee based on the use of public airport facilities during the month. The monthly fee shall be:

(A) Equal to the total number of pieces of merchandise delivered during the month times 25 cents; in other words, 25 cents for each piece of merchandise delivered during the month.

(B) Paid on or before the twentieth day of the succeeding month.

(4) An annual identification badge fee of $5 per badge. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-39 Monthly delivery report. (a) The permittee shall submit, along with the payment of the monthly fee required under this subchapter, a delivery report for each calendar month, on or before the twentieth day of the succeeding month.

(b) The monthly delivery report shall include:

(1) A listing of every delivery made during the month in chronological order; this listing shall provide the following information for each delivery:

(A) Date of delivery;

(B) Time of delivery; and

(C) Number of pieces of merchandise.

(2) The total number of pieces of merchandise delivered during the month.

(c) The permittee shall be subject to penalties, including revocation of permit, if any false information is provided on the monthly delivery report. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-40 Controls. (a) The department shall conduct regular inspections of permittee activities to help ensure:

(1) Accurate reporting of the number of pieces of merchandise delivered; and

(2) Compliance with the provisions of this chapter.

(b) The department shall, upon reasonable notice, be given access to any of the permittee's records, books or documents to verify reports submitted by the permittee. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-41 Designated areas. (a) The permittee shall deliver merchandise only to areas designated by the director.

(b) The permittee shall be allowed to keep the merchandise in the designated areas for a maximum of four hours starting from the time the merchandise is placed in the designated area. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-42 Identification of merchandise. (a) The merchandise for each delivery made at a public

airport shall be clearly and conspicuously marked with the:

(1) Permittee's name; and

(2) Time of delivery.

(b) The merchandise may be marked individually or as a group as long as it is readily identifiable at all times while it is at the airport.

(c) The permittee shall have an authorized representative, wearing the identification badge issued under this chapter, present at all times next to the merchandise, overseeing the merchandise as long as the merchandise is at the airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-43 Safety and security. (a) In order to help ensure the public health, safety and airport security, any merchandise shall be removed to a storage area by authorized department personnel if:

(1) The merchandise is unclaimed after four hours from the time of delivery; or

(2) The merchandise is left unattended for any amount of time in violation of section 19-20.1-42.

(b) Any merchandise not claimed after two days in storage may be summarily disposed of by the department without notice to the permittee.

(c) The cost of removal, storage or disposal of merchandise shall be assessed to the permittee. The proceeds, if any, from the sale or disposal of any unclaimed merchandise shall be used to offset the cost of removal, storage and disposal and the balance remaining shall be payable to the permittee or passenger upon proof of entitlement thereto. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-44 Unauthorized storage. Permittees

shall not keep, place, or store hand trucks, vehicles, carts, or any other equipment or supply item in any area of a public airport except in those locations or spaces specifically prescribed for such use or activity. Any improper placement or storage shall result in an assessment of a $10 fine for each item or article which is improperly placed or stored, or in the seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a fine and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the item or article at the address on record with the department if the owner is known. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten days after the mailing of the notice. If the owner is not known or cannot be located, the item or article shall be held for forty-five days from date of seizure after which time it shall be disposed of as unclaimed lost property. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 8

PORTER SERVICES

§19-20.1-45 Scope. The special provisions set forth in this subchapter shall apply to porter services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-46 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Accompanied baggage" means baggage which is claimed by a passenger at a public airport.

"Porter" means one who performs porter services.

"Porter services" means the carrying of baggage for passengers at public airports and other services incidental to porterage generally rendered by porters in and about air transportation terminals, including but not limited to:

(1) The carrying of baggage from baggage claim areas to curbside or to other areas within the airport as requested by the passenger;
(2) The loading of baggage aboard conveyance used by the passenger in departing the airport;
(3) The carrying of baggage from curbside to the check-in counters or to other areas within the airport as requested by the passenger; and
(4) The transporting of handicapped passengers by motorized carts to and from gate areas.

"Porterage" with respect to porter services shall generally mean the handling of accompanied baggage whereas "porterage" with respect to baggage pickup and delivery services shall generally mean the handling of unaccompanied baggage.

"Unaccompanied baggage" means baggage which is not claimed by a passenger at a public airport but for which prior arrangements have been made:

(1) For pickup at a public airport and delivery to a destination off the airport for arriving passengers; or
(2) For delivery to a point point at a public airport designated by the director for departing passengers. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-47 Requirements to obtain permit. To obtain the permit under this chapter, a person must:

(1) Pay the fees prescribed by this subchapter; and
(2) Have an existing written contract with an airline to perform porter services. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-48 Fees. Except for airline lessees authorized to provide porter services in their leases with the department, no person shall provide porter services in or at a public airport without paying the department the following fees:

(1) For each public airport at which porter service is provided, an annual administrative expense fee of $100; and
(2) An annual identification badge fee of $5 per badge. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-49 Unauthorized storage. The permittee shall not keep, place, park, or store hand trucks, baggage carts, motorized passenger carts, or any other equipment or supply item in any area of a public airport except in those locations or spaces specifically prescribed for that use or activity. Any improper placement or storage shall result in an assessment of a $10 penalty for each item or article which is improperly placed or stored, or in the seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a penalty and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the property at the address on record with the department. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten

days after mailing of the notice. If following reasonable attempts by the department, the owner cannot be located, the item or article shall be held for forty-five days from date of seizure after which time it shall be disposed of as unclaimed lost property. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-50 Motorized passenger carts. (a) The department shall issue decals which shall be placed on motorized passenger carts approved for use at a public airport. No carts shall be used to provide porter services at any public airport without a decal issued by the department. Carts shall be operated only on routes and locations designated by the director. Carts issued decals shall not be used on the airport for any purpose other than the transport of handicapped passengers and their escorts to and from gate areas.

(b) No motorized passenger cart shall be operated:

(1) In a careless or negligent manner or in disregard of the rights and safety of others;

(2) Without due caution or circumspection, or at a speed or in a manner which endangers or is likely to endanger persons or property;

(3) While the operator thereof is under the influence of intoxicating liquor, narcotic, or habit forming drug; and

(4) If the vehicle is so constructed, equipped, loaded or in such other condition as to endanger or be likely to endanger persons or property.

(c) The permittee shall be liable for any injury or damage to persons or property resulting from or attributed to the use of the carts at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-51 Soliciting prohibited. No porter solicit tips from passengers. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-52 Statement of contracted services. The permittee shall provide to the department upon request a statement certified by the serviced airline that a contract for porter services presently exists. This chapter shall become a part of all such contracts so that contracting parties are aware of the rights, duties, and responsibilities of the permittee. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-53 Airline lessees. (a) With the exception of sections 19-20.1-3 and 19-20.1-48, this chapter shall apply to airline lessees who provide their own porter services.

(b) Airline lessees who provide porter services to other airlines shall be subject to this chapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 9

PREARRANGED GROUND TRANSPORTATION

§19-20.1-54 Scope. The special provisions set forth in this subchapter shall apply to prearranged ground transportation services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-55 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Digital network" means any online-enabled application, software, website, or system offered or utilized by a prearranged ground transportation service that enables a customer's direct prearrangement of a ride with a driver and records data that describe for each driver on the network the following:

(1) The vehicle's registered owner, license plate number, and vehicle identification number or VIN;

(2) Proof of insurance as required by section 19-20.1-6;

(3) The total number, date, and time of all rides initiated at a public airport; and

(4) The total receipts earned by each ride initiated at a public airport and an itemization of any tax, tip, and other fees included in the receipts.

"Hotel" includes motel.

"Operator" includes any person who is properly and physically qualified to operate and control any motor or other vehicle in connection with any ground transportation service provided at a public airport by a permittee under this chapter. The operator may be a permittee itself or a qualified employee, contractor, assignee, agent, or other similar representative of the permittee.

"Prearranged ground transportation services" includes the providing or facilitating for hire of a motor vehicle, including off-airport rent-a-car vehicles, at any public airport for the purpose of transporting the hirer of, or passenger in, such motor vehicle and personal property where such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at the public airport or, upon or after his

arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation services to be performed, at least in part, at the public airport.

Prearranged ground transportation services also include passenger transportation services, tours, and courtesy car services for customers and guests upon vehicles owned or leased by the operators even if the services are provided gratuitously or may be an incidental part of another service.

Prearranged ground transportation services do not include the right to solicit, offer, and provide ground transportation services for hire to any person other than to persons for which ground transportation services had been arranged in advance.

"Software application service" shall have the same meaning as the term "Digital network".

"Taxi or taxicab service" includes the service of providing a motor vehicle for hire by the public at, on, or upon a public airport, which motor vehicle shall have a driver other than the hirer and be used for the purpose of transporting the hirer and incidental personal property to a destination and over a route controllable by a hirer.

"Transportation network company" or "TNC" means a person or an entity that uses a digital network or software application service to connect passengers to transportation network company drivers and uses the digital network or software application service to confirm the commercial activity and gross receipts of that activity; provided that the person or entity (1) does not own, control, operate, or manage the personal vehicles used by transportation network company drivers and (2) is not a taxicab company or a for-hire vehicle owner. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-56 Fees. Persons authorized to provide prearranged ground transportation services at public airports shall, in consideration of using state airport facilities for conducting business, pay the following fees as applicable:

(1) Off-airport rent-a-car service.
  (A) An annual administrative expense fee of $100 in advance.
  (B) An annual fee of $20 for each off-airport rent-a-car vehicle in the permittee's fleet as of October 1 of each year.
  (C) An annual registration fee of $250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(2) Courtesy vehicle service other than off-airport rent-a-car or hotel firms.
  (A) An annual administrative expense fee of $250 in advance.
  (B) An annual registration fee of $250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(3) Taxi, bus, limousine and stretch out.
  (A) An annual administrative expense fee of $100, in advance, per permittee providing these prearranged ground transportation services at any public airport.
  (B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services at the public airports listed below.
    (i) Seven percent at [~~Honolulu~~] Daniel K. Inouye International Airport in Honolulu.
    (ii) Three percent at public airports other than [~~Honolulu~~] Daniel K.

Inouye International Airport in Honolulu.

(4) Hotel courtesy vehicles.
Prearranged ground transportation services between a public airport and a hotel, provided by the hotel for its guests upon vehicles owned or leased by the hotel shall be charged:
(A) An annual administrative expense fee of $250 in advance.
(B) An annual registration fee of $250 for each courtesy vehicle used for transportation of customers to and from any public airport.
(C) An annual fee of $2 per sleeping room for rental by the hotel.

(5) Transportation network company.
(A) An annual administrative expense fee of $100, in advance, per permittee providing these prearranged ground transportation services at any public airport.
(B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services, consistent with the data provided by the TNC digital network or software application service, at the public airports listed below.
(i) Seven percent at Daniel K. Inouye International Airport in Honolulu.
(ii) Three percent at public airports other than Daniel K. Inouye International Airport in Honolulu.

[Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-57 Exemptions. The director may, in the public interest, exempt all persons providing ground transportation services at certain public airports from the payment of the fees required under this subchapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-58 Taxi services. The director reserves the right to revoke any non-exclusive privilege of providing taxi service at any public airport, except prearranged taxi service, and grant an exclusive taxi service concession any person in the manner prescribed by section 102-2, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-59 Signs. No person shall display any sign that extends more than six inches above the roof, hood, or trunk of any motor vehicle used to provide ground transportation at public airports. Flashing lights and audible devices, other than that required by safety ordinances and regulations are prohibited. The display of any rates or fees on motor vehicles is also prohibited. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-60 Restrictions. (a) Permittees and operators shall not solicit passengers or fares on airport premises. Pickup shall be limited to those passengers and clients who have made prior arrangement for the ground transportation service provided or facilitated by the permittee. The permittee, and its employees, agents and operators shall have evidence of such prior arrangements in the form of schedules, passenger manifests or other similar documentation which identifies the passengers and clients, available

for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups.

(b) Permittees shall not use dispatchers, agents, customer service assistants, operators, employees or any other persons who have a working arrangement with the permittee to engage in any effort to solicit or obtain ground transportation business on any public airport premises. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-61 Records of off-airport rent-a-car permittees. Permittees who provide off-airport rent-a-car ground transportation services in or at public airports shall be obligated to maintain a record and original source documents which shall account for all of the vehicles in the permittee' fleet as of October 1 each year, segregated by airport districts. The record, including original source documents, shall be kept for three years in the State following the end of the permit year. The State shall be granted access at all reasonable times to all such records and documents and may make or cause to be made a complete audit to verify the reasonableness of the reported number of vehicles in the permittee's fleet as of October each year. In the event that records and original source documents have not been kept in accordance with this provision, the State, shall in addition to other payments required by this chapter, be entitled to demand and receive an additional payment of ten percent of the total amount payable by the off-airport rent-a-car ground transportation service permittee to the State under this subchapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-62 Vehicle identification and tracking. (a) Each prearranged ground transportation permittee shall identify each of its vehicles that will be used at a public airport with one of the following:

(1) A decal issued by the department; or

(2) The permittee's logo, trade dress, or other company identifier as approved by the director.

The decal, logo, trade dress, or other company identifier shall be affixed to the vehicle at all times the permittee operates the vehicle at a public airport.

(b) If a permittee elects to use a decal issued by the department, the permittee shall be required to have a transponder or other tracking device issued and installed in each vehicle by the department to collect data that describe the activity and movement of the permittee's vehicle while it operates at a public airport. The data may be used to confirm the accuracy of fees and percentage of gross receipts paid by the permittee pursuant to section 19-20.1-56.

(c) If a permittee elects to use its logo, trade dress, or other company identifier, the permittee shall be required to have and use a digital network or software application service. The department shall verify the digital network or software application service meets the criteria set forth in section 19-20.1-55. The logo, trade dress, or company identifier shall be in good taste and shall not be vulgar or offensive. Any changes to the logo, trade dress, or company identifier that will be used at a public airport must also be approved by the director." [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. 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 19-20.1, 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 July 3, 2018, and filed with the Office of the Lieutenant Governor.

_____
Jade T. Butay
Director of Transportation

APPROVED AS TO FORM:

_____
Deputy Attorney General

V. Administrative Matters

A. Review and Assignment of Board Members' "Discussion Leader Assignments" for State Agencies' Administrative Rule Review

Discussion Leader Assignments

Discussion Leader: Tony Borge, Chair
Back-up Discussion Leader: Robert Cundiff, Vice Chair

1. Office of the Governor …… http://governor.hawaii.gov

Address: Governor David Y. Ige
Executive Chambers
State Capitol
Honolulu, HI 96813

Phone: (808) 586-0034
Fax: (808) 586-0006

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: NA

2. Office of the Lieutenant Governor …….. http://ltgov.hawaii.gov

Address: Lieutenant Governor Doug Chin
State Capitol, Fifth Floor
Honolulu, HI 96813
Fax: (808) 586-0231

Phone: **Oahu:** (808) 586-0255
Hawaii: 974-4000 ext. 60255
Kauai: 274-3141 ext. 60255
Maui: 984-2400 ext. 60255
Molokai/Lanai: 1-800-468-4644 ext. 60255

Discussion Leader: Tony Borge
Back-up Discussion Leader: Reg Baker

3. Department of Accounting & General Services ……..…. http://ags.hawaii.gov

Address: Roderick Becker, Comptroller
1151 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-0400
Fax: (808) 586-0775

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Garth Yamanaka

4. Department of Agriculture ……..… http://hdoa.hawaii.gov

Address: Scott Enright, Chairperson
Board of Agriculture
1428 South King Street
Honolulu, HI 96814

Phone: (808) 973-9550
Fax: (808) 973-9613

Discussion Leader: Tony Borge
Back-up Discussion Leader: Robert Cundiff

5. Department of the Attorney General …….. http://ag.hawaii.gov

Address: Russell Suzuki,
Acting Attorney General
Hale Auhau
425 Queen Street
Honolulu, HI 96813

Phone: (808) 586-1282
Fax: (808) 586-1239

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mark Ritchie

6. Department of Budget & Finance …… http://budget.hawaii.gov

Address: Laurel Johnston, Director
P.O. Box 150
Honolulu, HI 96810

Phone: (808) 586-1518
Fax: (808) 586-1976

Discussion Leader: Kyoko Kimura
Back-up Discussion Leader: Reg Baker

7. Public Utilities Commission (PUC)……..…… http://puc.hawaii.gov

Address: Randy Iwase, Chairman
Kekuanaoa Building
465 South King Street, Room 103
Honolulu, HI 96813

Phone: (808) 586-2020
Fax: (808)586-2066

Discussion Leader: Reg Baker
Back-up Discussion Leader: Robert Cundiff

8. Department of Business, Eco. Dev. & Tourism……..…… http://dbedt.hawaii.gov

Address: Luis P. Salaveria, Director
P.O. Box 2359
Honolulu, HI 96804

Phone: (808) 586-2355
Fax: (808) 586-2377

Discussion Leader: Reg Baker
Back-up Discussion Leader: Kyoko Kimura

9. Department of Commerce & Consumer Affairs……. http://cca.hawaii.gov

Address: Catherine Awakuni Colon, Director
335 Merchant Street
Honolulu, HI 96813

Phone: (808) 586-2850
Fax: (808) 586-2856

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: NA

10. Department of Defense…….…… http://dod.hawaii.gov

Address: Major General Arthur "Joe" Logan
Adjudant General
Office of the Adjutant General
3949 Diamond Head Road
Honolulu, HI 96816-4495

Phone: (808) 733-4246
Fax: (808) 733-4499

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Harris Nakamoto

11. Department of Education……..…… http://hawaiipublicschools.org

Address: Kristina Kishimoto, Superintendent
Board of Education
P.0. Box 2360
Honolulu, HI 96804

Phone: (808) 586-3313
Fax: (808) 586-3314

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Garth Yamanaka

12. Department of Hawaiian Home Lands……. http://dhhl.hawaii.gov

Address: Jobie Masagatani, Commission Chair
P.O. Box 1879
Honolulu, HI 96805

Phone: (808) 620-9501
Fax: (808) 620-9529

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch

13. Department of Health…….…….. **http://health.hawaii.gov**

Address: Virginia "Ginny" Pressler, MD, MBA, FACS, Director
1250 Punchbowl Street
Honolulu, HI 96813
Phone: (808) 586-4410
Fax: (808) 586-4368

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: NA

14. Department of Human Resources Development……..... **http://hrd.hawaii.gov**

Address: Ryker Wada, Interim Director
235 South Beretania St., Suite 1400
Honolulu, HI 96813
Phone: (808) 587-1100
Fax: (808) 587-1106

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch

15. Department of Human Services……. **http://humanservices.hawaii.gov**

Address: Pankaj Bhanot, Director
1390 Miller Street, Room 209
Honolulu, HI 96813
Phone: (808) 586-4997
Fax: (808) 586-4890

Discussion Leader: Kyoko Kimura
Back-up Discussion Leader: Reg Baker

16. Department of Labor & Industrial Relations…….. **http://labor.hawaii.gov**

Address: Leonard Hoshijo, Director
830 Punchbowl Street
Honolulu, HI 96813
Phone: (808) 586-8844
Fax: (808) 586-9099

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: NA

17. Department of Land and Natural Resources…… http://dlnr.hawaii.gov

E-mail:

Address: Suzanne Case, Chair
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 587-0401
Fax: (808) 587-0390

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: NA

18. Department of Public Safety……..…. http://dps.hawaii.gov

Address: Nolan Espinda, Director
919 Ala Moana Blvd. Room 400
Honolulu, Hawaii 968l4

Phone: (808) 587-1350
Fax: (808) 587-1421

Discussion Leader: Reg Baker
Back-up Discussion Leader: Garth Yamanaka

19. Department of Taxation…….....…… http://tax.Hawaii.gov

Address: Linda Chu Takayama, Director
P.O. Box 259
Honolulu, HI 96809-0259

Phone: (808) 587-1540
Fax: (808) 587-1560

Discussion Leader: Kyoko Kimura
Back-up Discussion Leader: Nancy Atmospera-Walch

20. Department of Transportation……..…….. http://hidot.hawaii.gov

Address: Jade Butay, Director
Aliiaimoku Building
869 Punchbowl Street
Honolulu. HI 96813

Phone: (808) 587-2150
Fax: (808) 587-2167

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: NA

21. University of Hawaii……. http://www.hawaii.edu

Address:	David Lassner, President	Phone: (808) 956-9704
Address:	Randolph G. Moore, Chair, Board of Regents	Phone: (808) 956-8213
	Bachman Hall	Fax: (808) 956-5156
	2444 Dole Street	
	Honolulu. HI 96822	

V. Administrative Matters

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