Small Business Regulatory Review Board Meeting

June 20, 2024

10:00 a.m.

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov
Tel: 808 798-0737

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Mary Albitz
Chairperson
Maui

Robert Cundiff
Vice Chairperson
O'ahu

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for Director, DBEDT
Voting Ex Officio

AGENDA
Thursday, June 20, 2024 ★ 10:00 a.m.
Leiopapa A Kamehameha Building – State Office Tower
235 S. Beretania Street, Conference Room 405
Honolulu, HI 96813

As authorized under Act 220, Session Laws of Hawaii 2021, and Section 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

A. By attending the in-person meeting at: Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Steet, Conference Room 405, Honolulu, HI 96813; or

B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:

https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQT09

C. To Join via Telephone: Dial 1-669-900-6833 with Meeting ID 883 5814 0200 Passcode 066739

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering * and **9** on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing * and **6** on your keypad.

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room - Diamond Head 4, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, June 19, 2024 so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: Agendas & Minutes – Small Business Regulatory Review Board (hawaii.gov). An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

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

I. Call to Order

II. Approval of May 16, 2024 Meeting Minutes

III. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 109, **Rules for Establishing Forest Stewardship**, promulgated by Department of Land and Natural Resources (DLNR) – *Discussion Leader – Jonathan Shick*

IV. New Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Commerce and Consumer Affairs (DCCA) – *Discussion Leader – Mary Albitz*

1. HAR Title 16 Chapter 107, **Relating to Horizontal Property Regimes**
2. HAR Title 16 Chapter 119.1 through 119.8, **Relating to Condominiums**

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 84, **Massage Therapy**, promulgated by DCCA – *Discussion Leader – Mary Albitz*

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, HAR Title 16 Chapter 72, **Acupuncture Practitioners**, promulgated by DCCA – *Discussion Leader – Mary Albitz*

D. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 11 Chapter 208.1, **Underground Storage Tanks**, promulgated by Department of Health – *Discussion Leader – Mary Albitz*

E. Discussion and Action on the Small Business Impact Statement and Proposed New HAR Title 13, Subtitle 14, **Hawaii Invasive Species Council**, Chapter 325 **General Provisions** and Chapter 326 **Control and Eradication of Invasive Species**, promulgated by DLNR – *Discussion Leader – Jonathan Shick*

V. Administrative Matters

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

1. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach
2. Presentations to Industry Associations
3. Staff's Small Business Outreach

VI. Legislative Matters

A. Discussion on the following legislative matters:

1. **House Bill 2354 HD1 SD2 CD1 – Relating to the Small Business Regulatory Review Board –** Clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to a request from small business owners
2. **Senate Bill 2974 SD2 HD1 CD1 – Relating to Economic Development –** Establishes a Business Revitalization Task Force within the Department of Business, Economic Development, and Tourism to identify methods to improve Hawaii's general economic competitiveness and business climate,

including the mitigation of regulatory and tax burdens; requires a report to the Legislature

VII. Election of Board Officers

A. Discussion and Action on the following:
   1. Chairperson, pursuant to Section 201M-5(c), HRS
   2. Vice Chair
   3. Second Vice Chair

VIII. Next Meeting: Thursday, July 18, 2024 at 10:00 a.m., held via Zoom and at Leiopapa A Kamehameha Building – State Office Tower, Conference Room 405, Honolulu, HI 96813

IX. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and jetaime.k.ariola@hawaii.gov as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate/accessible formats.

II. Approval of May 16, 2024 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MEETING MINUTES - DRAFT
May 16, 2024

ZOOM Meeting Recording

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

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

ABSENT MEMBERS:
- Dr. Nancy Atmospera-Walch

STAFF: DBEDT
Dori Palcovich
Jet'aime Ariola

Office of the Attorney General
Alison Kato

II. APPROVAL OF April 18, 2024 MINUTES

Vice Chair Cundiff motioned to accept the April 18, 2024 meeting minutes, as presented. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

III. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 13 Chapter 3 Rules Relating to Industrial Wastewater Discharge Local Limits, promulgated by Department of Environmental Services – City and County of Honolulu

Discussion leader and Second Vice Chair Shick stated that there were several technical changes and very little, if any, financial impact. Mr. Drew Nishigata, Civil Engineer from the Division of Environmental Quality at the City and County of Honolulu's Department of Environmental Services, summarized the proposed changes.

Mr. Nishigata explained the "local limits" development process and potential effects, costs and benefits associated with the proposed rule changes. He further explained that only

small businesses with the SIWWTP (Sand Island Wastewater Treatment Plant) are considered because these local limits would only apply to industrial users in this area.

The City is required by EPA to evaluate and implement any necessary local limits pursuant to its SIWWTP National Pollutant Discharge Elimination System, which they are now in the process of doing via the administrative rules. Further, the SIWWTP permits require the City to implement a pretreatment program in accordance with the Code of Federal Regulations. The City is then required to develop and enforce appropriate local limits to prevent Pass Through and/or interference at SIWWTP.

The basic potential impact to the industrial users is sampling of the three identified pollutants – zinc, BOD5, and TPH, however, the exact impact is unknown. The price of the tests for these pollutants range at around $100 for sampling and are performed about once a month.

Vice Chair Cundiff commended Mr. Nishigata for the tremendous amount of research and information provided as well as the active participation with the small businesses in the decision-making process and the contribution to the development of practical and effective compliance measures.

Second Vice Chair Shick made a motion to pass the rules onto public hearing.
Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title Chapter 60.1 Air Pollution Control, promulgated by Department of Health (DOH)

Discussion leader Mr. Morioka stated that the proposed rules have very little impact to small businesses, if any, which was concurred by Ms. Catherine Lopez, Engineer at DOH's Clean Air Branch.

Ms. Lopez explained that the changes to the rules, which include removing the emergency affirmative defense provision, and amending language to allow for non-structural types of firefighting training with proper advanced notification to the director. Changes will also clarify that non-burn periods are not only for weather conditions which inhibit the dispersion of air pollutants, but are also for high wind events that can spread air pollutants and increase fire danger.

When asked who the stakeholders are regarding the rules, Ms. Lopez stated that it would likely be businesses that offer firefighter training.

Mr. Morioka made a motion to pass the rules onto the Governor for public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

DRAFT

IV. ADMINISTRATIVE MATTERS

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

1. Update and Discussion on Becker Communications, Inc., regarding the Board's Small Business Outreach

Board members reviewed the proposed logo proposals for this Board, which mirror the new DBEDT logo. These logos can be used for headings of the Board's stationery, reports, signage, etc.

Mr. Yamanaka made a motion to accept the color scheme provided by Becker Communications for the Board's "SBRRB" logo. Chair Albitz seconded the motion and the Board members unanimously agreed.

2. Presentations to Industry Associations

Nothing was reported.

3. Staff's Small Business Outreach

Program Specialist Ms. Ariola performed the following outreach/meetings, particularly during the "Small Business" week – City County of Honolulu Office of Economic Revitalization; Meet the Resource Connectors workshop; and the Small Business Administration; Small Business Connection in West Oahu.

Ms. Gomes stated that during COVID, she was working with the Office of Economic Revitalization to create a grant for small businesses. She is very interested in working with and connecting the State and city regarding Japanese tourists in Hawaii. In addition, she is working to bridge the gap between the different agencies, state; city and county and available resources for small businesses. Ms. Gomes would like to start a conversation with city and state officials (perhaps even HVCB) to see how her organization can work together with government officials to find a balance between a strong tourist market. She has been trying to connect with DBEDT Director Tokioka and has requested Ms. Palcovich and Ms. Ariola assistance.

Mr. Yamanaka noted that he added the "Small Business Bill of Rights" brochure onto the Big Island Japanese Chamber's website. He questioned whether it would be prudent to have the brochure available to businesses on DCCA's website as a resource, specifically with the Business Action Center.

Ms. Ariola will research this, and she will also research any available options to assist with the Board's audio of the hybrid meetings, especially for those attending remotely who have some difficulty hearing when people are speaking in-person.

VI. LEGISLATIVE MATTERS

DRAFT

A. Update, Discussion and Action, if necessary, on the following legislative matters:

1. House Bill 2354 HD1 SD1 Relating to the S-mall Business Regulatory Review Board – Clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to a request from small business owners.

   This measure passed and is now awaiting the Governor's signature.

2. Senate Bill 2974 SD2 HD1 Relating to Economic Development – Establishes a Business Revitalization Task Force within the Department of Business, Economic Development, and Tourism to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigation of regulatory and tax burdens; requires a report to the Legislature.

   This measure passed and is now awaiting the Governor's signature.

   Ms. Gomes and Mr. Yamanaka both expressed an interest in being appointed as a member of measure's outlined Task Force.

VII. NEXT MEETING – Thursday, June 20, 2024 at 10:00 a.m., via Zoom and in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

VIII. ADJOURNMENT – Vice Chair Cundiff motioned to adjourn the meeting and Second Vice Chair Shick seconded the motion; the meeting adjourned at 10:51 a.m.

DRAFT

III. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 109, Rules for Establishing Forest Stewardship, promulgated by Department of Land and Natural Resources

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

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

Department or Agency: Dept. of Land and Natural Resources, Div. of Forestry and Wildlife

Administrative Rule Title and Chapter: HAR 13-109

Chapter Name: Chapter 109, Rules for Establishing Forest Stewardship

Contact Person/Title: Tanya Rubenstein

Phone Number: (808) 333-6803

E-mail Address: tanya.rubenstein@hawaii.gov **Date:** 05/15/24

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** **1151 Punchbowl St. Rm 325, online at: https://dlnr.hawaii.gov/dofaw/rules/**

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

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

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

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

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

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

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

☐ **Yes** ☑ **No**

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

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

☐ **Yes** ☑ **No**

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

* * *

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

The proposed rules were developed with the input of the The Forest Stewardship Advisory Committee

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

Yes - recommendations were incorporated to align state program with County and federal programs, incorporate revisions to HRS 195F and provide greater flexibility to program participants.

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

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

See attached information in Board of Land and Natural Resources Submittal for final approval

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

See exhibit of Board of Land and Natural Resouces Submittal with hearing officer summary

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

See attached hearing officer report and Board of Land and Natural Resources submittal (approved)

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

   (ii) Testified at the hearing: 2

   (iii) Submitted written comments: 4

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

   ☐ **Yes** ☑ **No**

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

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

Testifiers were in support of the proposed rule and did not request changes.

Approved: 10-19-2023

Small Business Regulatory Review Board

MEETING MINUTES
September 21, 2023

ZOOM RECORDING

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

MEMBERS PRESENT:
- Mary Albitz, Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:
- Robert Cundiff, Vice Chair
- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT
Dori Palcovich
Jet'aime Ariola

Office of the Attorney General
Alison Kato

II. APPROVAL OF August 17, 2023 MINUTES

Mr. Ritchie motioned to accept the August 17, 2023 meeting minutes, as amended. Second Vice Chair Shick seconded the motion and the Board unanimously agreed.

III. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 109, Rules for Establishing Forest Stewardship, promulgated by Department of Land and Natural Resources (DLNR)

Ms. Tanya Rubenstein, Cooperative Management Forester, from DLNR's Division of Forestry and Wildlife (DFW), presented an overview of the division's program. The presentation encompassed explaining what the forest stewardship program is, who participates in the program, objectives of the management plan along with incentives and examples of its practices, the purpose of participating in the program, and the types of forest stewardship projects.

Also discussed was the forest stewardship advisory committee and its role, the internal procedures for landowners, and the purpose and reasons for the proposed amendments. The Board of Land and Natural Resources approved DFW to proceed with the rule proposal in August. It was confirmed that this voluntary program, which has not been amended since 1999, will have a positive small business impact, which will help the state's ecological-tourism

companies. The proposed amendments are also intended to be more streamlined and user-friendly for landowners.

Regarding an inquiry into the cost of the program, it was noted that the implementation of new projects has been nil due to the pandemic; as such, the state legislature will be approached in 2024 to request needed funds for the forestry budget. There is also a possibility of receiving federal grant funds. As to the question about taking out invasive species, Ms. Rubenstein acknowledged that there is a management practice called "weed control" which is used prior to planting plants to assist with controlling invasive species.

Second Vice Chair Shick motioned to move the proposed amended rules to public hearing. Chair Albitz seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules, promulgated by Department of Agriculture (DoAg)

Mr. Christopher Kishimoto, Entomologist from DoAg, explained that the proposed amendment is to assist DLNR's Division of Aquatic Resources, which is the primary agency responsible for putting the northern large-mouth bass on the list of restricted animals. The purpose of this request is for a one-time import to perform testing to determine whether the bass can be safely released into Wahiawa public fishing area to help add diversity to the existing population already in existence.

Second Vice Chair Shick motioned to move the proposed amended rules to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed New HAR Title 19 Subtitle 5 Chapter 152, State Highway Enforcement Program, promulgated by Department of Transportation (DOT)

Ms. Laura Manuel, DOT's Highway Safety Specialist, explained that the purpose of this new rule is to establish the state's highway enforcement program, which adds a surcharge to illegal parking to existing penalties for violations of the state traffic code. This involves stopping, standing, and parking on state highways.

Fifty percent of the state's highway surcharge will be deposited into the state's highway fund with the remaining balance distributed to the respective police departments of the county from which the surcharge was collected. The funds will be used to enforce laws and ordinances pertaining to illegal parking on state highways.

Although there was no apparent impact on small business, one potential impact may be, for example, if a landscaping company performing work on the highway is parked on the side of the highway and receives a violation for doing so. Ms. Manuel added that the new rule was prompted by alleged problems on the Island of Kauai where cars were illegally parked along state highways, specifically at state parks.

RECEIVED
By SBRRB at 8:30 am, May 16, 2024

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

May 10, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

REQUEST FOR FINAL APPROVAL TO ADOPT PROPOSED AMENDMENTS TO AND COMPILATION OF HAWAII ADMINISTRATIVE RULES CHAPTER 13-109 (RULES FOR ESTABLISHING FOREST STEWARDSHIP).

The proposed amendments can be reviewed online via the Lieutenant Governor's Office website at, https://dlnr.hawaii.gov/wp-content/uploads/2024/01/Chapter-13-109-HAR-Draft-2024.pdf, or in person at any Division of Forestry and Wildlife (DOFAW) district office between 8:00 a.m. and 3:30 p.m., Monday through Friday, except for State holidays.

PURPOSE

This submittal requests the Board of Land and Natural Resources (Board) approval to adopt proposed amendments to and compilation of Hawai'i Administrative Rules (HAR) Chapter 13-109, Rules for Establishing Forest Stewardship.

Chapter 13-109, HAR, was adopted on January 8, 1999, to provide rules to implement Chapter 195F, Hawaii Revised Statutes (HRS), which authorizes the Board to establish a forest stewardship program (FSP) to provide technical advice and financial assistance to applicants on a cost-share basis to promote forest stewardship and restoration by managing, protecting, and restoring critical natural resources on private forest or formerly forested property. It has not previously been amended.

The purpose of the proposed amendments to the existing rules (which are attached as **Exhibit C**) is to (1) ensure consistency with recent amendments to Chapter 195F, HRS; (2) provide greater flexibility for landowners by allowing applicants to match State-provided cost-share support with non-state financial assistance programs, and (3) update definitions, management practices, and language related to State, Federal, and County forestry incentive programs. Additionally, the Division of Forestry and Wildlife (DOFAW) has added other non-substantive and stylistic amendments for clarity and

consistency with other related provisions. A detailed description of the proposed amendments appears in DOFAW's August 11, 2023, Board submittal (Item C-3), which is available online at https://dlnr.hawaii.gov/wp-content/uploads/2023/08/C-3.pdf.

BACKGROUND

66% of Hawai'i's 1,748,000 acres of forestland are privately owned and managed. The State of Hawai'i Forest Stewardship Program (FSP), which became effective in July 1991 through the passage of Act 327, Session Laws of Hawai'i 1991, authorized the Department of Land and Natural Resources (DLNR) to provide state funds to technically and financially assist private landowners and managers on a cost-share basis to protect, manage, and restore essential forest resources.

The FSP is administered by DLNR via DOFAW and focuses on the following objectives: forest productivity (timber and non-timber forest resources); native ecosystem health and biodiversity; watershed protection and management; wildlife habitat conservation and restoration; and recreation. The State's FSP is aligned with and supported by the National Forest Stewardship Program, authorized by the Cooperative Forestry Assistance Act of 1978 and administered by the U.S. Department of Agriculture (USDA) Forest Service. Both state and federal programs provide technical assistance to private forest owners to encourage and enable active, long-term forest management, with a focus on the development of comprehensive management plans that provide landowners with the information they need to manage their forests for a variety of products, ecosystem services, and public benefits.

The Board approved DOFAW's request to initiate rule-making proceedings, including its request to hold a hybrid, statewide public rulemaking hearing on August 11, 2023, according to HRS chapter 91 to amend and compile HAR chapter 13-109, Rules for Establishing Forest Stewardship. The Small Business Regulatory Review Board approved moving the proposed amendments to a public hearing on September 27, 2023.

SUMMARY OF PUBLIC HEARING PROCEEDINGS

Notice of a hybrid, statewide public hearing on March 13, 2024, was published on February 11, 2024, in the Sunday edition of the Honolulu Star-Advertiser. The DLNR also issued a press release on February 28, 2024, regarding the hybrid statewide public hearing. The DLNR held a hybrid statewide public hearing via Zoom, with an in-person host site at the DLNR Boardroom on O'ahu[1] on March 13, 2024, at 5:30 p.m.[2] A summary of the rules and an opportunity to comment was provided at the following link:

[1] The DLNR Boardroom is located at 1151 Punchbowl St., Room 132 (Kalanimoku Building), Honolulu, HI 96813.

[2] The format of the public hearing was a hybrid virtual/in-person format with an in-person host site for those wishing to provide in-person testimony on Oahu as well as a virtual option via Zoom. The in-person site had a TV, speakers, microphone, and camera setup and was logged into the Zoom. The Zoom public hearing officer provided a presentation on the proposed rules and then collected testimony.

https://dlnr.hawaii.gov/forestry/lap/fsp/2024rules/, and written testimony was accepted until March 29, 2024. Upon closing the public comment period, the testimony was compiled, reviewed, analyzed, and summarized.

Four individuals provided testimony on the proposed rule amendments. Two individuals provided oral testimony in person at the public meeting, one of whom also provided written testimony, and the DLNR received written comments from two people. Of the four testifiers, three supported the proposed amendments, and one provided a comment.

Testimony regarding the proposed amendments was in support of increased cost-share support for 1) the development of FSP management plans, 2) allowing non-timber forests in the program, 3) inclusion of leasehold lands, and 4) greater flexibility for allowing applicants to match state FSP cost-share support with non-state financial assistance programs. One individual provided comments in support of gathering rights on public and private lands. There was no testimony opposing the proposed rules. The hearing officer's report and minutes from the public meeting analyze the public testimony and are attached as **Exhibit A**.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs.Land Use Commission, State of Hawai'i* (*Ka Pa'akai*)[3] that State and government agencies must preserve and protect traditional and customary Native Hawaiian rights, and an appropriate analytical framework was needed to assess whether these rights were unduly violated.[4] The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

On March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawai'i*[5] that the obligation described in *Ka Pa'akai* not only applied to contested case hearings but also applied to rulemaking actions.[6] In doing so, the Court provided a modified Ka

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[3] *Ka Pa'akai o ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

[4] "Following up on [*Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903 P.2d 1246 (1995) (PASH)], we recognized in *Ka Pa'akai* that in contested case hearings, the State and its agencies have an 'affirmative duty . . . to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" *Flores-Case 'Ohana v. Univ. of Haw.*, 153 Hawai'i 76, 83, 526 P.3d 601, 608 (2023) (quoting *Ka Pa'akai*, 94 Hawai'i at 45–47, 7 P.3d at 1082–84).

[5] *Flores-Case 'Ohana v. Univ. of Haw.*, 153 Hawai'i 76, 526 P.3d 601 (2023).

[6] "In sum, the *Ka Pa'akai* framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts 'effectuate[s] the State's obligation to protect native Hawaiian customary and

Pa‘akai Analysis for rulemaking actions. Pursuant to the modified Ka Pa‘akai Analysis, before adopting rules, agencies must consider the following:

(1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any,
(2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule, and
(3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if found to exist, as balanced with the State's regulatory right.

Flores-Case ‘Ohana, 153 Hawai‘i at 85, 526 P.3d at 611 (footnote omitted) (quoting another source) (internal quotation marks omitted) (formatting altered).

Subsequently, the Department has provided the following analysis on this proposal's effects on Native Hawaiian traditional and customary practices:

1) **Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any.** The current proposal amends the existing administrative rules for a voluntary technical and financial assistance program for private landowners. The overall objective of this FSP program is the restoration and management of forests, which may enhance opportunities for traditional and customary practices related to forest gathering and provide other cultural benefits such as watershed protection and prevention of erosion into streams and the ocean. In general, private lands may be included in the program that are potentially used for traditional and customary practices, such as gathering forest plants for various cultural uses. However, specific land areas for future FSP projects are unknown, depending on which eligible landowners eventually apply to participate in the program. The proposed amendments to program rules outline the essential requirements and process for landowner participation. They do not, in and of themselves, directly affect any known Native Hawaiian traditional and customary practices.[7] During the public comment period, testimony emphasized protecting traditional and customary practices. However, no specific traditional and customary practices were identified as affected by the proposed amendments to Chapter 13-109, HAR.

2) **The Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule.** No Native Hawaiian traditional and

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traditional practices[.]'" *Flores-Case ‘Ohana*, 153 Hawai‘i at 84, 526 P.3d at 609 (quoting *Ka Pa‘akai*, 94 Hawai‘i at 47, 7 P.3d at 1084).

[7] "When undertaking this analysis, the agency is not required to 'negative any and all native Hawaiian rights claims regardless of how implausible the claimed right may be.'" *Flores-Case ‘Ohana*, 153 Hawai‘i at 85–86, 526 P.3d at 610–11 (footnote omitted) (quoting *State v. Hanapi*, 89 Hawai‘i 177, 184, 970 P.2d 485, 492 (1998)).

customary rights or practices were identified or implicated as directly affected by the proposal.[8]

3) **Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if Found to Exist, as Balanced with the State's Own Regulatory Rights.** Notwithstanding the lack of Native Hawaiian traditional and customary rights or practices identified or implicated that are directly affected by the proposal, DOFAW notes that the forest stewardship plans developed by private landowners who participate in the FSP program are required to include information about the natural and cultural resources and history of the proposed project area. Project proposals and plans are reviewed case-by-case by the forest stewardship advisory committee, which includes Native Hawaiian interests, at its public meetings. Additionally, plans selected for state implementation funding are brought to the Board for approval of a forest stewardship management agreement. The review and consideration of these plans at public meetings offer additional opportunities for public input on the identification of and protections for Native Hawaiian traditional and customary practices. The DLNR is committed to ensuring protections for Native Hawaiian traditional and customary rights and practices identified on or implicated by lands participating in the FSP program.

LEGAL AUTHORITY:

Chapter 195F, HRS (Forest Stewardship), establishes a program to financially assist private landowners in managing, protecting, and restoring critical natural resources in Hawaii's forested and formerly forested lands.

Section 195F-8, HRS, authorizes the DLNR to adopt administrative rules relating to the Forest Stewardship Program according to the procedures set forth in Chapter 91, HRS.

CHANGES TO PROPOSED RULE AMENDMENTS:

Based on the comments received and on internal discussions, the DLNR has decided to move forward with the proposal without any substantive changes. However, the DLNR has incorporated minor, non-substantive edits suggested by the Governor's office for clarity.

The final proposed amendments and compilation of HAR Chapter 13-109 drafted in Ramseyer format are attached as **Exhibit B**. The proposed amendments can also be reviewed online via the Lieutenant Governor's Office website at https://dlnr.hawaii.gov/wp-content/uploads/2024/01/Chapter-13-109-HAR-Draft-2024.pdf, or in person at any Division of Forestry and Wildlife (DOFAW) district office between 8:00 a.m. and 3:30 p.m., Monday through Friday, except for State holidays.

[8] "Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement[,] and the need for analysis ends there." *Flores-Case 'Ohana*, 153 Hawai'i at 86, 526 P.3d at 611.

RECOMMENDATION:

That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-109, Rules for Establishing Forest Stewardship, as set forth in **Exhibit B** attached hereto.

Respectfully submitted,

_____
David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

_____
DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Exhibit A: Hearing Officer's Report of Public Meeting
Exhibit B: Proposed Amendments to Chapter 13-109, HAR (Ramseyer)
Exhibit C: Current Unofficial Compilation of Chapter 13-109, HAR

EXHIBIT A

HEARING OFFICER'S REPORT AND MINUTES OF:

Public Hearing for the proposed amendments to Hawaii Administrative Rules Chapter13-109, "relating to Forest Stewardship"

Online via Zoom and in-person at 1151 Punchbowl St. Room 132 (Kalanimoku Building), Honolulu, Hawaii 96813

March 13, 2024, 5:30PM

SUMMARY OF TESTIMONIES RECEIVED

Written testimonies are kept on file in the Division of Forestry and Wildlife for public review.

Two oral testimony and three written testimonies were received.

Irene Sprecher - Provided oral testimony and identified herself as the president of Forest Solutions Inc and the Vice President of the Hawaii Forest Industry Association. Testifying as individual, she expressed her support of the proposed amendments to the rules. She clarified that she supported the program while previously employed with the Division of Forestry and Wildlife and that Forest Solutions provides planning support for some of the management plans that are submitted to the Forest Stewardship Program (FSP). She said that having access to technical support and guidance offered by FSP is important for landowners who do not have the expertise needed to manage their forests. She appreciated the increase in cost-share support for the development of management plans, and that FSP is being more inclusive to include non-timber forest product objectives.

Nicholas Koch – Provided oral and written testimony and stated that he represents Siglo Tonewoods, who has a current FSP contract. He was also a prior member of the Forest Stewardship Advisory Committee. He expressed his support of the proposed amendments to the rules. He said that plans are time consuming for consultants to prepare resulting in high upfront costs for applicants, so he appreciated the increase in cost-share support for plan development. This will encourage more landowners to participate. He also supported the inclusion of leased lands since some leasehold projects were turned away while he was serving on the committee. He noted that many landowners find non-timber forest products more important than timber products. Lastly, he stated that he appreciates the flexibility of FSP in allowing management plan revisions and the use of different funding sources to support landowner needs.

James K. Manaku Sr. – Provided written testimony and identified himself as a concerned parent, grandparent, and great grandparent. He was concerned about his gathering rights on both public and private land.

Leslie Cole-Brooks – Provided written testimony in strong support of the proposed rule changes. She explained that she worked to update the rules under the Hawaii County Code as they pertained to native forest restoration. The updates resulted in increased participation in

the Native Forest Dedication Program. She felt the proposed FSP rule changes are similar and that it will be beneficial to program participants. Allowing long term leaseholders and the increase in cost-share support help to alleviate the cost and administrative challenges of becoming a forest steward. She also appreciated the increase in flexibility for management plans.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

The public hearing was called to order at 5:38pm. In attendance were the following staff members from the Department of Land and Natural Resources, Division of Forestry and Wildlife:

Tanya Rubenstein – Hearing Officer	Cooperative Resource Management Forester
Marissa Zhang	Statewide Service Forester
Brittany Lawton	PCSU Forestry Associate

Three members of the public attended the meeting, two of whom provided oral testimony. Two written testimonies were submitted, one at the hearing and one by email. The information that the Division of Forestry and Wildlife had prepared for this public hearing was presented as planned.

The public hearing was adjourned at 6:03pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

A. Approval to hold this public hearing on the proposed amendments and to appoint Tanya Rubenstein, Cooperative Resource Management Forester, as the Hearing Officer was obtained from the Board of Land and Natural Resources on August 11, 2023.

B. Notice of this public hearing was published on February 11, 2024, in the Sunday edition of the Honolulu Star-Advertiser.

Minutes prepared and respectfully submitted by Tanya Rubenstein.

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

Amendment and compilation of Chapter 109
Hawaii Administrative Rules

SUMMARY

1. The title of Subchapter 3 is amended.

2. §§13-109-1 through 13-109-11 are amended.

3. Chapter 109 is compiled.

Amendment and Compilation of Chapter 109
Hawaii Administrative Rules

1. Chapter 109, Hawaii Administrative Rules, entitled "Rules for Establishing Forest Stewardship", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

Subchapter 1. General Provisions

§13-109-1 Purpose and applicability
§13-109-2 Definitions
§13-109-3 Establishment and duties of the forest stewardship advisory committee
§13-109-4 Applicant eligibility
§13-109-5 Applicant enrollment
§13-109-6 Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

§13-109-7 Forest stewardship management plan

Subchapter 3. Agreement with Applicant

§13-109-8 Agreement and conditions
§13-109-9 Reports
§13-109-10 Penalty payback provisions
§13-109-11 Payback provision for commercial production of timber or other forest products

SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 [~~Purpose and applicability.~~]**Purpose and applicability.** The purpose of this section is to provide rules to implement chapter 195F, HRS, which authorizes the board of land and natural resources to establish a forest stewardship program to financially assist applicants to manage, protect, and restore important natural resources on private forest or formerly forested property. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 [~~Definitions.~~]**Definitions.** As used in this chapter, unless the context requires otherwise:

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources.

"Agreement" means a written program forest stewardship management [~~contract~~] agreement between the board and applicant[~~.~~], in which the parties agree that the board will contribute funding to cover the cost of implementing the forest stewardship management plan.

"Applicant" means any private entity or person having an interest in or holding any encumbrance upon [~~private~~] eligible property in the State, as set forth in section 13-109-4, including any private entity or person having a leasehold interest in the real property with an unexpired term of ten or more years.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Forest stewardship advisory committee" means a group of people representing federal, state, and county resource agencies, private landowners, forest industry, consulting foresters, native Hawaiian interests, and environmental and conservation organizations who advise the administrator. The forest stewardship advisory committee shall meet the requirements for a State Forest Stewardship Coordinating Committee, as set forth in the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, § 19 (codified at 16 U.S.C. §2113 (2018)), as amended.

"Hold-down rate" means the maximum cost-share rate that the program will pay to an applicant to implement a practice.

"Landowner" means any person having an interest in or holding any encumbrance upon land in the State, including any person having a lease interest in the real property with an unexpired term of ten or more years.

"Management dedication term" means a period in which the applicant agrees to implement and maintain the project site as established under the agreement.

"Management plan" means a written document for the management of a specified area identifying forest stewardship management goals, objectives, and forestry practices necessary for the long-term management of forest resources, fire hazards, timber and wood products, soil and water resources, riparian areas, wetlands, fish and wildlife habitats, and outdoor recreation.

[~~"Natural area partnership program" is a state program as set forth in chapter 195, HRS, and is designed to manage private lands that are of natural area quality that are permanently dedicated to conservation.~~]

"Native vegetation" means trees, shrubs, and plants endemic or indigenous to Hawaii.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to chapter 183C, HRS, intact native natural communities identified by the heritage program pursuant to section 195-2, HRS, and other lands or waters meeting criteria established by the natural [~~areas~~] area reserves system [~~pursuant to section 195-2, HRS.~~]commission.

"Practice" means a management action that is eligible for program cost-share assistance.

"Program" means the forest stewardship program established in section 195F-3, HRS.

"Program proposal" means a request from a landowner to the program for cost-share assistance for the development of a forest stewardship management plan.

[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

§13-109-3 [~~Establishment and duties of the forest stewardship advisory committee.~~]**Establishment and duties of the forest stewardship advisory committee.** (a) The chairperson shall establish a forest stewardship advisory committee to advise and assist the division to plan, coordinate, and implement the program. The chairperson or the chairperson's designee or the authorized representative shall appoint [~~a~~

~~chairperson and~~] members to the forest stewardship advisory committee. Members shall be volunteers, serve part-time, and shall not be compensated by the program for duties performed.

(b) The forest stewardship advisory committee shall perform the following duties:

(1) Review and recommend [~~for approval to the administrator,~~] program [~~proposal and management plans prior to board submittal;~~] proposals to the administrator for approval;

(2) Review and recommend forest stewardship management plans to the administrator for approval;

(3) Recommend approval of financial assistance for implementation of forest stewardship management plans to the administrator, prior to board submittal;

[~~(2)~~] (4) Establish and periodically review program practices and recommend hold-down rates for each program practice; [~~and~~]

[~~(3)~~] (5) Advise the department on other [~~program~~] relevant policies and guidelines[~~.~~],including but not limited to local and national initiatives; and

(6) Review and make recommendations to the administrator regarding federal Forest Legacy Program proposals, grant requests, and projects pursuant to the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §7 (codified at 16 U.S.C. §2103c (2012)), as amended.

(7) Review applications for membership on the forest stewardship advisory committee and make recommendations to the chairperson or her designee or the authorized representative for approval.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving [~~two-year~~] three-year staggered terms. The chairperson or the chairperson's designee or the authorized representative may appoint members to consecutive terms.

(d) The forest stewardship advisory committee shall maintain a record of its activities and actions.

(e) Any action taken by the forest stewardship advisory committee shall be by a simple majority of its members.

(f) [~~Seven~~] The forest stewardship advisory committee shall consist of thirteen members. Seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 [~~Applicant eligibility.~~]**Applicant eligibility.**

(a) [~~In order to~~] To qualify under this program, [~~applicants~~] an applicant shall be [~~private individuals, joint owners, private organizations, private associations, or corporations.~~] a landowner, as set forth in section 13-109-2.

(b) Applicants are eligible to receive program assistance if [~~private forest~~] property is:

(1) Managed by applying approved practices, as defined by [~~chapter~~] section 195F-5(b), HRS[~~.~~];

(2) Managed so as not to degrade native vegetation, as defined by section 195F-2, HRS[~~.~~], while applicant is implementing approved forest stewardship management plan as set forth in section 195F-5, HRS[~~.~~]; and

(3) A minimum of five contiguous acres that will be dedicated to the program.

(c) Applicants are ineligible to receive program assistance, if [~~private~~] otherwise eligible property is:

(1) Leasehold for a period of less than ten years following program approval;

[~~(2) Managed under existing federal, state, or private financial assistance programs. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance if the applicant agrees to comply with the requirements of the program or if forest management practices are expanded or enhanced to meet the requirements of this section;~~] or

[~~(3)~~] (2) A potential natural area reserve[~~. as defined in this chapter~~].

[~~(d) A minimum of five contiguous acres of private property shall be dedicated to the program.~~]

(d) Private lands managed under existing federal, county, or private sector financial and/or technical assistance programs in conjunction with the forest stewardship program are not eligible to receive more than ninety per cent of the total cost of the forest management practices from all financial and technical assistance programs. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 [~~Applicant enrollment.~~]**Applicant enrollment.**

(a) Applicants [~~found~~] eligible under section 13-109-4 shall follow these steps for program enrollment:

(1) Applicants shall submit a program proposal to the forest stewardship advisory committee for consideration. The proposal shall describe the applicant's forest management objectives, including

proposed practices[~~,~~] and the nature of the forest resources to be managed. The forest stewardship advisory committee shall recommend for approval to the administrator, eligible proposals that adequately address current program priorities. Program priorities include, but are not limited to:

(A) Enhancement and protection of key watershed areas in the public interest;

(B) Development or adaptation of new forestry and conservation techniques for Hawaii;

(C) [~~Provision~~] Provisions for economic diversification and rural employment; and

(D) Preservation or restoration of especially valuable natural resources, including native plants, animals, and ecosystems.

(2) Applicants whose program proposals are recommended for approval by the forest stewardship advisory committee[~~,~~] and approved by the administrator, may prepare and submit a [~~program~~] forest stewardship management plan pursuant to section 195F-5(a), HRS, for consideration to the forest stewardship advisory committee [~~. The program management plan shall cover a minimum of ten years.~~] as provided in section 13-109-7(a). Applicants are eligible to receive reimbursement payments from the division in an amount not to exceed the limits set forth in section 195F-6(a), HRS, for the development of a forest stewardship management plan after the forest stewardship management plan is recommended for approval by the forest stewardship advisory committee and approved by the administrator.

(3) Reimbursement for the development of a forest stewardship plan shall be subject to approval of the forest stewardship management plan by the board, or the board's designee.

(b) Upon approval of the [~~program~~] forest stewardship management plan by the forest stewardship advisory committee[~~, the~~] and administrator, the administrator may recommend to the board, approval of financial assistance for implementation of all or selected portions of the forest stewardship management plan, subject to availability of funding. The division shall also prepare [~~and enter into~~] an agreement pursuant to section 195F-6(c)(3), HRS, between the applicant and board [~~for approval~~], as provided in section [~~13-109-7(a).~~] 13-109-8(a), for approval by the board. The [~~program~~] forest stewardship management plan shall be attached as an [~~addendum~~] exhibit to the agreement.

(c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the [~~program management plan~~] agreement for the duration of the [~~approved project implementation period.~~] management dedication term. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §§195F-5, 195F-6)

§13-109-6 [~~Establishment of approved forest stewardship practices.~~]**Establishment of approved forest stewardship practices.** (a) A list of forest stewardship management practices shall be eligible for cost-share assistance as provided in section [~~195F-5,~~] 195F-5(b), HRS. [~~They~~] The eligible categories of forest stewardship practices include, but are not limited to:

(1) Applicant forest stewardship management plan development [~~enables applicants~~] to define [~~their~~] the forest management objectives and the specific management practices that [~~they~~] will [~~employ~~] be employed to achieve these objectives[~~.~~];

(2) Reforestation and afforestation [~~establishes~~] to establish or [~~reestablishes diverse~~] reestablish forest stands through natural regeneration, planting, or direct seeding for conservation purposes, windbreaks, and sustained [~~timber~~] production[~~. A list of eligible program practice components includes:~~
~~(A) Site preparation;~~
~~(B) Seedling purchase and/or production;~~
~~(C) Seedling planting;~~
~~(D) Fertilization and/or soil amendments;~~
~~(E) Weed and/or moisture control; and~~
~~(F) Tree seedling protection, including predator control.~~] of forest products;

(3) Forest and agroforest [~~improvement improves~~] management to improve forest stand productivity, stand vigor, forest health, aesthetic quality, fire prevention, and the value and quality of [~~wood~~] forest products. [~~A list of eligible program practice components includes:~~
~~(A) Release of desirable tree species;~~
~~(B) Noncommercial thinning;~~
~~(C) Control of undesirable plant species;~~
~~(D) Fertilization and/or soil amendments; and~~
~~(E) Tree seedling protection, including predator control.~~

~~(4) Windbreak and hedgerow establishment establishes, maintains, and renovates windbreaks and hedgerows to~~

~~reduce soil erosion and conserve soil and water resources. A list of eligible program practice components includes:~~

~~(A) Site preparation;~~

~~(B) Seedling purchase and/or production;~~

~~(C) Seedling planting~~

~~(D) Fertilization and/or soil amendments;~~

~~(E) Weed and/or moisture control;~~

~~(F) Non-commercial thinning;~~

~~(G) Mulching; and~~

~~(H) Tree seedling protection, including predator control.~~];

[~~(5)~~] (4) Soil and water protection and improvement [~~maintains or improves~~] to maintain or improve water quality and soil productivity on forested land and along waterways. [~~A list of eligible program practice components includes:~~

~~(A) Critical area revegetation;~~

~~(B) Mulching;~~

~~(C) Water diversion; and~~

~~(D) Tree seedling protection, including predator control.~~];

[~~(6)~~] (5) Riparian and wetland protection [~~protects, restores, and improves~~] to protect, restore, and improve wetlands and riparian areas to maintain water quality and enhance habitat. [~~A list of eligible program practice components includes:~~

~~(A) Site preparation;~~

~~(B) Seedling purchase and/or production;~~

~~(C) Seedling planting;~~

~~(D) Fertilization and/or soil amendments;~~

~~(E) Establish permanent vegetative cover;~~

~~(F) Streambank stabilization; and~~

~~(G) Tree seedling protection, including predator control.~~];

[~~(7)~~] (6) [~~Wildlife~~] Native fish and wildlife habitat improvement [~~restores, improves, or establishes~~] and management to restore, improve, maintain, or establish permanent upland and/or wetland habitat for [~~specific game, non-game, non-native or~~] native fish and wildlife species. [~~A list of eligible program practice components includes:~~

~~(A) Control of undesirable plant species;~~

~~(B) Site preparation;~~

~~(C) Wildlife watering units;~~

~~(D) Seedling purchase and/or production;~~

~~(E) Seedling planting;~~

~~(F) Fertilization and/or soil amendments; and~~
~~(G) Tree seedling protection, including predator control.~~];and

(7) [~~(8)~~] Forest recreation enhancement [~~establishes and enhances~~] to establish and enhance forest recreation[~~. A list of eligible program practice components includes:~~
~~(A) Trail construction~~
~~(b) Harvesting practices, and practices~~] opportunities.

(8) Invasive species management to control and manage incipient or established invasive species.

(b) The forest stewardship advisory committee shall recommend to the board eligible practices for use under the program.

[~~(b)~~] (c) [~~Harvesting practices and practices~~] Practices involving [~~Christmas tree or~~] orchard production are not eligible for program cost-share assistance. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

§13-109-7 [~~Forest stewardship management plan.~~]**Forest stewardship management plan.** (a) The forest stewardship management plan shall include:

(1) Cover sheet. This page lists the applicant's name and address; location of [~~private~~] property described in the plan; the name, address, title, and phone number of the person completing the plan; and the date the plan is completed.

(2) Signature page. This page shall be signed by the applicant, person preparing the plan, and by the administrator certifying that the plan meets the criteria established for the program.

(3) [~~Stewardship plan preface.~~] Executive summary. This [~~form, when checked off by the person writing the program management plan, lists the natural resource values:~~
~~(A) Reforestation;~~
~~(B) Soil and water quality;~~
~~(C) Agroforestry;~~
~~(D) Forest health;~~
~~(E) Archaeological or cultural resources;~~
~~(F) Wildlife enhancement;~~
~~(G) Threatened and Endangered species; and~~

~~(H) Native resources.~~
~~that the applicant has considered to qualify this program plan as a stewardship project.~~] section summarizes the property description, past and current land uses, current forest conditions (e.g., forest type, vegetation, wildlife, forest health, threats, and other resource concerns), landowner vision and goals, and management objectives.

(4) Introduction. This [~~portion of the plan~~] section briefly describes [~~private~~] the property being dedicated to the program, current and historic land uses, including any commercial uses, elevation, rainfall, topography, the applicant's overall vision and goals, and a concise summary of the applicant's specific forest management objectives.

(5) Land and resource description. This [~~portion~~] section describes the physical and ecological characteristics of the property being dedicated to the program, including existing vegetation, [~~slope, elevation, aspect,~~] existing infrastructure, access, soil and watershed conditions, fish and wildlife habitats, threats to forest health and function, forest products, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.

(6) [~~Recommended~~] Management objectives and recommended practices. This [~~portion~~] section describes the specific forest management objectives and one or more forest stewardship practices as recommended by the person writing the applicant's program management plan as provided in section 13-109-6(a)(1) to (8).

(7) Practice implementation schedule. This [~~portion~~] section summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. [~~It~~] The schedule shall outline the program practices, approved program reimbursements, and the applicant's costs.

(8) Budget summary. This [~~portion~~] section estimates the annual total costs contributed by the program, any other contributing financial assistance program, and applicant for the duration of the approved project implementation period.

(9) [~~Program map. A program map or topographic map at one inch equals twenty-four thousand feet scale~~] Project maps. Maps, such as a location map, project attribute map, and soil map, shall be attached to the [~~program~~]

forest stewardship management plan. The [~~map~~] maps shall delineate the area which the applicant is dedicating to the program. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 [~~Agreement and conditions.~~]**Agreement and conditions.** (a) The division [~~shall~~] may recommend an agreement, as set forth in section 13-109-2, for the applicant's implementation for all or portions of a forest stewardship management plan, pursuant to section 13-109-5(b).

(b) The division may develop, process, and administer an agreement with the applicant for board approval that shall include:

(1) The scope of work and time of performance to implement program practices;

(2) The applicant's compensation for implementing approved program practices;

(3) Amendment procedures to the applicant's forest stewardship management plan;

(4) Procedures to inspect completed program practices;

(5) Applicant's program management plan; and

(6) Other terms and conditions as determined by the board.

[~~The agreement shall be for a minimum of ten years.~~

~~(b)~~] (c) The agreement, as set forth section 13-109-2, shall be for a minimum of ten years. Depending upon the management objectives, goals, and schedule, the applicant [~~can choose to accept a~~] and division may agree to a longer program management dedication term [~~of greater than 10 years~~]. An agreement, as set forth in section 13-109-2, that includes management practices associated with timber production shall require a management dedication term of a minimum of twenty years.

[~~(c)~~] (d) Applicants with a board approved forest stewardship management plan and agreement, as set forth in section 13-109-2, subject to availability of funds, shall:

(1) Receive [~~reimbursed~~] reimbursement payments from the division [~~up to fifty per cent of the total actual costs~~] in an amount not to exceed the limits set forth in section 195F-6(a), HRS, to [~~develop and~~] implement practices in the applicant's approved [~~program practices~~] forest stewardship management plan not to

exceed a total amount per year per applicant as [~~designated~~] approved by the [~~division;~~] board;

(2) Be required to [~~spend~~] expend the applicant's funds before seeking reimbursement payments from the division[~~; and~~

~~(3) Not use other federal, state, or county government program funds for the applicant's fund matching requirements~~]. The applicant may use funds provided by federal, county, or private sector financial and technical assistance programs to fulfill the applicant's cost-share requirement; provided that the funds supplied from all financial and technical assistance programs do not cover more than ninety per cent of the actual cost of forest management practices;

[~~(d) Other conditions include:~~

~~(1) Reimbursement payments to the applicant shall:~~]

[~~(A)~~](3) [~~Be~~] Receive reimbursement payments within the hold-down rates that were established for each program practice [~~by~~] based on recommendation of the forest stewardship advisory committee;

[~~(B) Not be made for a management practice that is funded through another government program;~~]

[~~(C)~~] (4) [~~Not be made~~] Receive reimbursement payments only for [~~any~~] work [~~not~~] identified in the [~~program~~] forest stewardship management plan; and

[~~(D)~~] (5) [~~Not be made~~] Receive reimbursement payments for program practices implemented [~~prior~~] subsequent to the board approving the [~~program~~] agreement. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 [~~Reports.~~]**Reports.** (a) The applicant shall submit [~~semiannual~~] semi-annual progress reports every six months to the division for each year in which the applicant receives program funding. The reports shall detail program accomplishments, areas requiring technical advice, and any proposed modifications to the program management plan and other conditions deemed necessary by the board to implement the purposes of chapter 195F, HRS.

(b) [~~Upon applicant's submittal of progress reports and program practice invoices,~~] Before making any reimbursement payments, the division shall have the right to inspect and approve the work on [~~private~~] the property after prior notice has been [~~made~~] given to the applicant. [~~Upon approval, the division shall reimburse the applicant an amount up to fifty per~~

~~cent of the total actual cost to implement approved management practices and based on the program budget in the agreement and as provided in section 13-109-8(d)(1)(A) to (D).~~]

(c) In the event that the applicant determines in good faith that it is unable to [~~fulfill its financial and program management obligations,~~] implement the agreement, the [~~division~~] chairperson or the chairperson's designee or the authorized representative may renegotiate the terms of the agreement with the applicant. Terms of the agreement shall include:

(1) Reestablishment of management priorities;

(2) Deferral or discontinuation of the specified work; or

(3) An extension of time to accomplish the specified work.

[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §1925F-6)

§13-109-10 [~~Penalty payback provisions.~~]**Penalty payback provisions.** (a) Failure by the applicant to comply with the [~~management plan and~~] agreement terms may result in the cancellation of the [~~forest stewardship designation.~~] agreement by the board.

(b) In the event that the agreement is cancelled [~~the applicant defaults on the agreed terms between the board and applicant~~], the applicant shall promptly pay the State the following payback and penalty moneys:

(1) If [~~the applicant defaults~~] cancelled in the first three years following the initial date of the agreement, the applicant shall pay back all matching funds to the State;

(2) If [~~the applicant defaults~~] cancelled after the first three years following the initial date of the agreement, the applicant shall pay back matching funds received for the immediately preceding three years to the State; and

(3) A penalty provision consisting of an interest payment as determined in the agreement between the board and applicant shall be added to the [~~refund~~] payment due to the State. [~~Interest payment shall be calculated on an annual per cent of funds received by the applicant.~~] [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-7)

§13-109-11 [~~Payback provision for commercial timber production.~~]**Payback provision for commercial production of timber or other forest products.** If an applicant's primary management objective is commercial [~~timber~~] production [~~,~~] of

timber or other forest products, the board may require as a condition to receiving state matching funds a payback provision that a certain percentage of all matching state funds be paid back to the State upon each commercial [~~timber~~] harvest as set forth in the [~~contract~~] agreement between the board and the applicant. [~~A commercial timber harvest as used herein is defined as a certain minimum volume of timber removed per acre from a certain minimum acreage of the applicant's property as determined by the division or as set forth in the contract between the board and the applicant.~~] [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

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 and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of Chapter 109, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

_____
DAWN N. S. CHANG
Director of Department
of Land and Natural
Resources

APPROVED AS TO FORM:

_____
Deputy Attorney General

IV. New Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by DCCA:

1. HAR Title 16 Chapter 107, Relating to Horizontal Property Regimes
2. HAR Title 16 Chapter 119.1 through 119.8, Relating to Condominiums

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

Date: 5/16/2024

Department or Agency: DCCA - PVLD - Real Estate Branch

Administrative Rule Title and Chapter: Title 16 Chapter 107 / Title 16 Chapters 119.1-119.8

Chapter Name: Horizontal Property Regimes / Condominiums

Contact Person/Title: Kedin Kleinhans / Senior Condominium Specialist

E-mail: kkleinha@dcca.hawaii.gov Phone: 808-586-2643

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

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

☑ Yes ☐ No

If "**Yes**," provide details: Physical copies available in office, electronic file posted on LG and DCCA websites

I. Rule Description:

☑ New ☑ Repeal ☐ Amendment ☐ Compilation

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

☑ Yes ☐ No

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

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

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

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

☐ Yes ☑ No

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

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

☐ Yes ☑ No

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

* * *

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

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
   We anticipate that condominium developers, managing agents, and possibly associations of unit owners may fall under the HRS §201M-1 definition of "small business". As such, the requirements proposed in HAR Chapters 16-119.1 through 16-119.8 may affect these entities through direct and/or indirect cost increases.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.
   Not all developers, condominium managing agents, and associations of unit owners are anticipated to incur any cost increases; however, estimates are provided in the attached "Small Business Impact Review" in the event a cost increase is incurred.

   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.
      The proposed rules do not impose a new or increased fee or fine.

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

   c. Reason for the new or increased fee or fine.
      N/A

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

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.
   Monetary benefits to the Department are not anticipated.

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.
The Real Estate Commission ("Commission") formed a “Blue Ribbon Committee” comprised of various stakeholders, including small business owners, who may be impacted by the adoption of new administrative rules relating to condominiums. The Blue Ribbon Committee was tasked with discussing and recommending possible rule language to implement HRS Chapter 514B. After several years of deliberation by the Blue Ribbon Committee, the attached draft rules were compiled and presented to the Commission.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
It appears there are no alternatives to the proposed rules for HRS Chapter 514B. This chapter currently has no administrative rules. The proposed rules are intended to effectuate and supplement the provisions of HRS Chapter 514B, and are not intended to change the substantive law. Should concerns arise in the public hearing, the Commission will consider whether certain provisions could be amended or removed without compromising consumer protection.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
Certain provisions in the proposed rules establish various budgetary and record-keeping requirements, which may involve additional fees to pay for services performed by, for example, CPAs or property management companies. Consistent with the philosophy underlying the condominium law of self-governance and self-enforcement by the unit owners with minimal government intervention, the language for these provisions were drafted with the intent to provide an open-ended approach to satisfying the proposed requirements.

7. How the agency involved small business in the development of the proposed rules.
Members of the Blue Ribbon Committee included small business owners, organizations that represent small businesses, and individuals who may be impacted by the adoption of new administrative rules relating to condominiums.

   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.
   Yes - after several years of meetings and discussion by stakeholders, the Blue Ribbon Committee recommended the proposed draft HAR Chapters 16-119.1 through 16-119.8 to the Commission.

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.
   There are no mandated federal, state, or county standards applicable to this area.

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

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

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

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

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

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

* * *

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI
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NADINE Y. ANDO
DIRECTOR | KA LUNA HOʻOKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HOʻOKELE

May 16, 2024

MEMORANDUM

TO: Chairperson Albitz
Small Business Regulatory Review Board
Department of Business, Economic Developer & Tourism

FROM: Nadine Y. Ando, Director
Department of Commerce and Consumer Affairs

SUBJECT: Small Business Impact Review

Proposed Repeal of Title 16, Chapter 107, Hawaii Administrative Rules, Relating to Horizontal Property Regimes

Proposed Adoption of Title 16, Chapters 119.1, 119.2, 119.3, 119.4, 119.5, 119.6, 119.7, and 119.8, Hawaii Administrative Rules, Relating to Condominiums

We kindly request your review of the proposal to repeal Hawaii Administrative Rules ("HAR") Chapter 16-107, Relating to Horizontal Property Regimes, and simultaneously adopt HAR Chapters 16-119.1 through 16-119.8, Relating to Condominiums.

I. Summary of Proposed Rules:

The Hawaii Real Estate Commission ("Commission") proposes to repeal HAR Chapter 16-107, upon the simultaneous adoption of HAR Chapters 16-119.1 through 16-119.8. The rules are prepared as a single rulemaking action in accordance with the Hawaii Administrative Rules Drafting Manual, Third Edition, Section 00-5-4.1. The reasons for this rulemaking action are as follows:

CHAPTER 16-107 HORIZONTAL PROPERTY REGIMES

Hawaii Revised Statutes ("HRS") Chapters 514A and 514B are two State laws that govern condominium projects in their registration and governance. HAR Chapter 16-107 was

promulgated to effectuate HRS Chapter 514A; however, HRS Chapter 514A was formally repealed through Act 181, Session Laws of Hawaii 2017.

HRS Chapter 514B cited as the Condominium Property Act, was enacted to apply to all condominiums created in Hawaii after July 1, 2006. As this chapter has no administrative rules, the Commission formed a "Blue Ribbon Committee" comprised of various stakeholders, including small business owners, who may be impacted by the adoption of administrative rules. The primary objective of the Blue Ribbon Committee was to discuss and recommend proposed rule language to implement HRS Chapter 514B. The Blue Ribbon Committee compiled the enclosed draft HAR Chapters 16-119.1 through 16-119.8, which were presented to and approved by the Commission to proceed through the rule adoption process. An outline of the proposed chapters is provided below:

CHAPTER 16-119.1 CONDOMINIUMS – GENERAL PROVISIONS

Section 16-119.1-1 Applicability. On November 25, 2016, the Commission received a memorandum from the Legislative Reference Bureau, generally relating to form and style. Per the memorandum, all rulemaking actions, and proposals for changes for which a public hearing is held after December 21, 2016, should be at the chapter level in accordance with the Hawaii Administrative Rules Drafting Manual, Third Edition. Accordingly, the rules are divided into eight respective topical chapters. This section specifies that HAR Chapters 16-119.1 through 16-119.8 are to be read in conjunction and apply only to HRS Chapter 514B.

Section 16-119.1-2 Severability. In the event any part of HAR Chapter 16-119.1 is rendered invalid, this section provides that the remaining provisions of the chapter continue to remain valid and effective.

Section 16-119.1-3 Objectives. Clarifies that HAR Chapters 16-119.1 through 16-119.8 are intended to supplement the provisions of HRS Chapter 514B and increase consumer protection. The rules are not intended to change the substantive law of HRS Chapter 514B.

Section 16-119.1-4 Definitions. Details terminology used in HRS Chapter 514B and HAR Chapters 16-119.1 through 16-119.8 to improve comprehension of the laws and rules in a uniform and consistent manner:

(1) Adding "Association" to clarify the term includes a condominium association organized under prior condominium statutes, HRS Chapter 514A.

(2) Adding "Building permit for the project" to codify the Commission's informal non-binding interpretation that a permit that is less than the final building permit is considered a building permit for the project.

(3) Adding "Board" to indicate that the terms "board" and "board of directors" are synonymous and defined in HRS §514B-3.

(4) Adding "Certificate of occupancy" to specify that county agencies issue either a final or temporary certificate of occupancy.

(5) Adding "Certify", "certified", or "certification" to mean an affirmation as to the facts being true to the best of an individual's knowledge and beliefs.

(6) Adding "Commission" to mean the "real estate commission" for purpose of clarity as HRS §514B-3 defines "commission" as the "real estate commission of the State."

(7) Adding "Condominium" and "Condominium property regime" to clarify the terms are synonymous and defined in HRS §514B-3.

(8) Adding "Controlling interest" to specify that a person may acquire a financial interest, voting interest, or both to succeed to the interest of a developer.

(9) Adding "Department" to identify the Department of Commerce and Consumer Affairs, State of Hawaii.

(10) Adding "Developer" to indicate that the term, or any term that may be synonymous, is defined in HRS §514B-3.

(11) Adding "Director" to identify the Director of the Department of Commerce and Consumer Affairs.

(12) Adding "Evidence of recordation" to allow flexibility in condominium recordation documents without compromising consumer protection.

(13) Adding "Financial institution" to make clear that association monies may be deposited in institutions authorized as a financial institution in this State.

(14) Adding "First unit conveyance" to specify that for a sale of a unit to have occurred, the first transfer of legal or equitable title must be made to a person unaffiliated with the developer.

(15) Adding "House rules" to mean the rules and regulations adopted by a condominium association or board.

(16) Adding "Maintenance fee" to include special assessments, with the exception of certain assessments relating to the collection or enforcement of fees, e.g., late charges, penalties, attorney fees. The statute provides for the regulation of "maintenance fees" without specifying what "maintenance fees" are.

(17) Adding "Offer for sale" to mean any attempt to encourage a person to acquire an interest to a condominium project, with the exception of a preregistration solicitation as provided in HRS §514B-85.

(18) Adding "Over the telephone" to clarify that the transfer of association funds may be authorized through an electronic medium if a condominium association or board previously authorized the transfer in writing.

(19) Adding "Project" to indicate that the term, or any term that may be synonymous, is defined in HRS §514B-3.

(20) Adding "Sale [of] any units" to exclude any sale, transfer, or conveyance of a unit pursuant to the registration exceptions enumerated in HRS §§514B-51(b) and 514B-81(b).

(21) Adding "Serious illness" to codify the Commission's informal non-binding interpretation that a duly licensed physician certifies whether an individual has a serious illness.

Section 16-119.1-5 Commission forms. Housekeeping change to specify that registrants must use the most recent Commission-approved forms.

Section 16-119.1-6 Filing of other documents and information. Clarifies the Commission's discretionary authority to require the submittal of additional documentation to complete the registration application, and to require actual proof of any submitted document, certified statement, or information.

Section 16-119.1-7 Abandonment of incomplete registration application. Provides for a shorter time period, other than what is provided by HRS §436B-9 (six months as compared to two years), by which a registration application shall be deemed abandoned if it remains incomplete. Pursuant to HRS §436B-3(b) the licensing laws or rules of a regulated industry shall prevail over HRS Chapter 436B.

Section 16-119.1-8 Documents and information. Requires the public documents submitted by a developer for condominium registration to be provided to prospective purchasers of the condominium. This section further specifies timeframes for the disclosure of public documents and retention of records.

CHAPTER 16-119.2 CONDOMINIUMS – ADVERTISEMENT

Section 16-119.2-1 Advertisement. Defines the term "advertisement" and excludes from the definition certain discussions between a developer or owner and existing tenants

regarding a possible conversion of the property into a condominium property regime. This section further requires all advertising to indicate that the project is a condominium and prohibits the use of specific words and dotted or dashed lines that may indicate the project is a legally subdivided project. For dotted or dashed lines, a disclosure must be provided to explain that lines are for identification purposes only.

Section 16-119.2-2 Use of developer's public report for advertising. Specifies that only the true and entire copy of the Developer's Public Report ("DPR"), including a Commission-issued effective date, may be used for advertising.

Section 16-119.2-3 Name on advertising. Requires advertisements to use the project name indicated on the declaration and application for a DPR.

CHAPTER 16-119.3 CONDOMINIUMS – PROJECT REGISTRATION

Section 16-119.3-1 Name of the condominium project. Details instructions on certifying the name of a condominium or project as not substantially similar to a currently registered condominium, project, or business, and clarifies that misrepresentation of the certification is a violation of HRS §514B-94.

Section 16-119.3-2 Unit sale and project registration. Provides for the applicability or exemption of project registration requirements and specifies when a project is considered registered with the Commission.

Section 16-119.3-3 Effective dates; developer's public reports; owner builder exemption. Prohibits the Commission from issuing an effective date for a DPR for units subject to the owner-builder permit exemption of HRS Chapter 444, but provides the Commission discretionary authority in issuing an effective date for units that fall under the Contractors License Board's determination of an "unforeseen hardship" pursuant to HRS §444-2.5.

Section 16-119.3-4 Copies of developer's public reports. Clarifies HRS §514B-56 requiring a developer to provide the Commission copies of the DPR within thirty days of the issuance of an effective date. This section provides an unspecified number of copies to allow the Commission to change the number of copies as needed.

Section 16-119.3-5 Bulk sale; portion of developer's inventory. Details the bulk sale provision enumerated in HRS §514B-51(b)(3) with current practice and policies and provides developers flexibility in an ever-changing economy without compromising consumer protection. This section also clarifies that any bulk sale shall involve at least two units of remaining inventory.

Section 16-119.3-6 Filing of parking plan. Requires the parking plan to comply with all federal, state, county, and Commission requirements, and further requires the developer to disclose to prospective purchasers the type of parking stalls available, including disability accessibilities.

Section 16-119.3-7 Lost or destroyed plans. Provides alternatives the Commission may accept when building plans are lost or destroyed. In condominium conversions where the buildings are older, county permitting offices have reported that older building plans are not kept anymore, lost, or destroyed.

Section 16-119.3-8 Method of computing percentage of common interest. Clarifies current Commission procedures requiring the developer to disclose the method or formula used to compute the percentage of common interest assigned to each unit.

Section 16-119.3-9 Metes and bounds description. Implements the Commission's informal non-binding interpretation specifying requirements for the description of property boundaries and provides the Commission authority to accept a Hawaii-licensed land surveyor's certification of the property boundaries.

Section 16-119.3-10 Method of computing floor area. Requires the developer to disclose the method or formula used to compute the total living area of each unit. This section also clarifies that certain area types, such as lanais, must be reported separate from the living area.

Section 16-119.3-11 Filing of other documents. Clarifies the Commission's discretionary authority to require the submittal of additional documents and information to complete the registration application.

Section 16-119.3-12 Signature on an application for registration; developer's public report; other documents. Describes the signatures and related documents required to complete the condominium project registration application.

Section 16-119.3-13 Amendments to the developer's public report. Allows the Commission to permit the developer to disclose up to two material changes and/or four pertinent changes using a short form amended DPR. This section also enumerates the items required in an amended DPR, including a summary of changes, notice that the amended DPR should be read with the previous DPR, description of purchaser rescission rights, and a list of documents purchasers should review. To provide developers with flexibility in reporting changes without compromising consumer protection, developers may submit an addendum to report non-substantive changes, such as typographical

errors, for Commission review and disposition. To further ensure prospective purchasers receive accurate information about their purchase, this section requires all title reports submitted with an amended DPR to be dated not more than 45 days, compared to the prior 60 days enumerated in HAR Chapter 107.

Section 16-119.3-14 Annual report. Clarifies the information required in an annual report as described in HRS §514B-58 and provides a timeframe of thirty days for its submittal. This section also defines current procedures requiring developers to search and determine whether a condominium project contains any code violations.

Section 16-119.3-15 Spatial units. Provides descriptive and compliance requirements for the consideration of a spatial unit consistent with the Commission's informal non-binding interpretations.

Section 16-119.3-16 Registering new units. Details processes to register new units with registered or unregistered units. This section also clarifies that unregistered units must be created as a new project in accordance with HAR Chapter 16-119.4.

Section 16-119.3-17 Cooperatives. Clarifies the applicability of HRS Chapter 514B for a cooperative housing project converting to a condominium. This section also provides a waiver of the broker listing requirement if certain requirements are met.

CHAPTER 16-119.4 CONDOMINIUMS – DEVELOPER'S PUBLIC REPORTS

Section 16-119.4-1 Project registration application; documents and information. Before a developer can begin sales of any units to the public, the Commission must issue an effective date for a DPR. The report, prepared by the developer, discloses all material facts about the project. This new section lists the required documentation and information a developer must submit for the issuance of an effective date for the DPR. The resulting information facilitates a private consultant's review of a draft DPR for material facts disclosures and streamlines the registration process. The section specifies additional documents required for different application scenarios, e.g., project located in an agriculturally-zoned district. To further ensure prospective purchasers receive accurate information about their purchase, this section requires the report provided by a Hawaii-licensed architect or engineer to be prepared within six months prior to the submission of the DPR.

Section 16-119.4-2 Content of developer's public report. Requires DPRs to contain language easily understood by purchasers via the Flesch Reading Ease Formula and describes the necessary disclosures to register a project with the Commission. Proposed subsection (f) provides definitions for a "phased project" and "phasing plan" and clarifies

that each phase shall be separately registered with the Commission. In addition, proposed subsections (g) and (h) enumerate the required disclosures to register a conversion project and a project located in an agricultural zone, respectively.

Section 16-119.4-3 Delivery of developer's public report. Clarifies when a DPR is deemed delivered to a purchaser and provides for an alternate delivery of the DPR if the purchaser submits a written agreement to receive the DPR through a medium other than print, e.g., electronic copy.

Section 16-119.4-4 Use of purchaser deposits to pay project costs. Defines "cost of construction" and related terms to specify the types of funds that are acceptable or prohibited to pay for project costs.

Section 16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives. Describes the content, conditions, and form of other substantially equivalent or similar instrument accepted in place of the performance bond. The proposed equivalents or instruments include an irrevocable letter of credit and alternative arrangement. The conditions include the submission of a lender's letter accepting the bond or equivalent; a developer's statement agreeing to the release of purchaser's funds only after the completion of the construction and sale of the unit, and adequate disclosures to be included in the DPR regarding the developer's use of a material house bond.

Section 16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount of completion of construction. Provides the Commission authority to receive and review requests from developers to reduce the dollar amount of security. This section also specifies the documents to be included with a request, and conditions for Commission approval.

CHAPTER 16-119.5 CONDOMINIUMS – SALES TO OWNER-OCCUPANT

Section 16-119.5-1 Exclusions. Implements the Commission's informal non-binding interpretation providing exemptions from the 50% owner-occupant designation of units for sales to prospective owner-occupants. The exemptions include the offering of timeshare units, leasehold fee interests to the existing owners of leasehold units, and where a project consists of one residential unit and the balance of the units in the project are not residential.

Section 16-119.5-2 Sales exempt from owner-occupant requirements. Specifies additional exemptions from the 50% owner-occupant requirement which include

residential projects located in county-zoned hotel or resort areas apart from the Waikiki special district.

Section 16-119.5-3 Fifty per cent of units. Clarifies the applicability and required percentage of the 50% owner-occupant requirement for condominium projects with three units.

Section 16-119.5-4 Offers of sale of residential units. Provides developers the option to use either a chronological or lottery system when offering the initial sale of residential units and specifies certain days to include or exclude when calculating the timeframe to offer residential units to prospective owner-occupants.

Section 16-119.5-5 Publication of announcement. Defines "general circulation" as a newspaper that is published on a daily basis and distributed to all segments of the State, or published in a county on a weekly basis, for consistency with the Commission's current practices and policies.

Section 16-119.5-6 Extenuating circumstances affecting an owner-occupant's compliance. Specifies the conditions and requirements for the Commission to receive requests for an informal non-binding interpretation that an extenuating circumstance exists and consider the issuance of a "no action" letter when the extenuating circumstance caused non-compliance with the owner-occupant requirements.

Section 16-119.5-7 Sample copies of forms. Requires developers to provide a sample of their affidavit of the purchaser's intent to become an owner-occupant, and reservation agreement between the developer and purchaser.

Section 16-119.5-8 Failure to comply. Prescribes the course of action and sanctions to be taken when a developer fails to comply with the owner-occupant announcement requirements, including the immediate ceasing of any sales offering and the refund of all monetary deposits, cancellation of owner-occupant affidavits, cancellation of sales contracts, and the republication of the owner-occupant announcement. This section also imposes the same sanctions on a developer who elects to comply with the owner-occupant announcement, but fails to comply with the owner-occupant requirements of HRS Chapter 514B.

Section 16-119.5-9 Owner-occupant affidavit. Provides conditions and circumstances for the joint ownership of a unit with a non-owner-occupant. The conditions include proof of writing that the lender requires the affidavit, and the developer has received the confirmation, and the requirement that if a non-owner-occupant conveys title within the year, the conveyance must be to the owner-occupant.

CHAPTER 16-119.6 CONDOMINIUMS – REQUIREMENTS FOR REPLACEMENT RESERVES

Section 16-119.6-1 Objective. Clarifies the chapter's objective in ensuring each unit owner contributes their fair share of shared expenses and that HAR Chapter 16-119.6 is intended to supplement the provisions of HRS §514B-148 and not to change the substantive law of HRS Chapter 514B.

Section 16-119.6-2 Applicability of chapter. Specifies that the rules of HAR Chapter 16-119.6 apply to all condominiums created in the State and requires the developer to include in the declaration, at a minimum, provisions calculating and funding replacement reserves.

Section 16-119.6-3 Definitions.

(1) Adding "Asset" to specify that all parts of a condominium's property are to be factored into the reserve study for maintenance and repair.

(2) Adding "Association property" to describe the parts of the condominium property that the association is obligated to maintain, repair, and replace. This definition ensures that all significant potential liabilities of the association are considered in preparing a reserve study on collecting reserves. A separate definition for "exempt association property" is included to specify that units and certain limited common elements are not considered "association property".

(3) Adding "Budget year" to mean the fiscal year used by the condominium association for its budgetary work. Housekeeping change.

(4) Adding "Cash flow plan" to explain the intent of using a properly calculated cash flow plan that collects reserve funds and prevents unit owners from taking value out of a condominium by underfunding reserves, leaving subsequent purchasers to pay for the underfunding through increased maintenance fees or special assessment(s).

(5) Adding "Component" to mean each line item enumerated in the physical analysis portion of the reserve study. Housekeeping change.

(6) Adding "Contingency reserves" to describe a number of issues that may warrant the use of emergency funds, rather than "regular" reserves.

(7) Adding "Emergency" to expand the definition of "emergency situation" in HRS §514B-148(h) by focusing on the substantial depletion of funds and the need to rebuild reserves.

(8) Adding "Estimated age" or "effective age" to mean estimated useful life minus estimated remaining life. Housekeeping change.

(9) Adding "Estimated remaining life" to provide a general timeframe on when an asset will require maintenance.

(10) Adding "Estimated replacement reserves", "reserve fund contribution", or "funding goal" to specify the amount of reserve funds to be assessed and collected each budgetary year to secure funds for the reserve plan.

(11) Adding "Estimated useful life" to clarify that the length of time an asset is expected to function starts on the completion of its initial construction, or for an existing asset, the completion of its restoration or repair.

(12) Adding "Exempt association property" to specify certain property with an estimated remaining life over twenty years or property that will require maintenance at a cost of less than 0.1% of an association's annual budget are not considered "association property". This definition also requires any exempt property that becomes "association property" to comply with transitional rules provided in proposed HAR §16-119.6-11.

(13) Adding "Full replacement reserve" to provide the calculation of funding an asset relating to its current estimated useful life.

(14) Adding "Funds", "fund balance" or "reserve funds" to clarify that funds borrowed by an association are not included in calculating its statutory replacement reserve, with the exception of certain loans subject to HAR §16-119.6-12.

(15) Adding "Managing agent" to provide, in part, the scope of a managing agent's "fiduciary" role as designated in HRS §514B-132(c) including the preparation of a replacement reserve study. This definition also clarifies that an employee of a managing agent who prepares the replacement reserve study is also considered a "managing agent".

(16) Adding "Minimum replacement reserve" to specify that a minimum of 50% for a full replacement reserve or 100% for a cash flow plan is required pursuant to HRS §514B-148(b).

(17) Adding "Reserve study" to clarify that the study involves a physical analysis of the property and a financial analysis of the condominium association on an annualized basis.

(18) Adding "Statutory replacement reserves" to require an association to obtain 50% of estimated replacement reserves, or for a cash flow plan 100% of estimated replacement reserves, to satisfy the reserve requirements of HRS §514B-148(b).

(19) Adding "Substantially deplete" to specify an expense that reduces an association's reserves by more than 75% would fall under the emergency provisions enumerated in HAR §16-119.6-7.

Section 16-119.6-4 Effective date for establishing statutory replacement reserves. Requires a condominium board of directors to adopt an annual operating budget for each following year, provided that if an association has yet to hold its first meeting, then the developer must disclose to each unit owner in writing the plans for use of reserve funds.

Section 16-119.6-5 Calculation of estimated replacement reserves; reserve study; good faith. Details the preparation and procedures to assist condominium associations and boards in calculating their association's estimated replacement reserves for each asset, including adjusting for inflation. This section also clarifies that estimates are deemed calculated in good faith if the individuals calculating are acting as fiduciaries as provided in HRS §414D-149.

Section 16-119.6-6 Fund accounting for each part of the association property; use of separate funds for other than stated purpose. Requires an association to establish separate funding accounts for each asset exceeding $10,000 and disclose the purpose and project amount of each fund. This section also prescribes requirements calculating and allocating funds using full replacement reserves or a cash flow plan.

Section 16-119.6-7 Emergencies and emergency situations. Specifies a timeframe of three budget years for an association whose reserves have substantially depleted to restore its reserves to the statutory amount, including associations that use a cash flow plan. This section also clarifies that the 20% budgetary threshold provided in HRS §514B-148(e) applies to the budget year that the expense will occur.

Section 16-119.6-8 Contingency reserves. Provides that a board may establish a separate contingency reserve based upon the property's age, history of maintenance, and any other factors the board finds relevant.

Section 16-119.6-9 Conflict of chapter. Clarifies supremacy between federal and state tax laws, HRS Chapter 514B, HAR Chapter 16-119.6, a project's declaration, and association bylaws. This section also expands on a board's right to spend or assess for items required by an association's reserve study.

Section 16-119.6-10 Reserve funds non-transferable. Specifies that all replacement reserve and contingency reserve funds collected from unit owners become the property of the association. This section also clarifies that there is no right to a unit owner's reimbursement of reserve funds upon sale of a unit.

Section 16-119.6-11 Exempt association property; disclosure; transition to association property. Details procedures in transitioning an asset from "exempt association property" to "association property" and calculating its replacement reserves related to its estimated remaining life.

Section 16-119.6-12 Borrowing and special assessments to fund replacement reserves. Provides a board the ability to fund expenses by borrowing additional funds, transferring designated funds, issuing special assessments, use cash on hand, or any combination to fund the expense with the intent to reduce hardship on the association.

Section 16-119.6-13 Leasing of association property. Clarifies that a board may obtain property via lease instead of purchasing a replacement, provided the leased property must be included in the association's reserve study.

Section 16-119.6-14 Distribution of budgets and reserve studies. Specifies instructions on the distribution of the association's annual operating budget to unit owners, including certain information and documents that must be included with the distribution of the budget, such as the findings by a certified public accountant on the adequacy of reserves.

Section 16-119.6-15 Enforcement. Provides that a member of the association may compel the board to comply with the statutory reserve study requirements through HRS §514B-157 should the board breach its fiduciary duty. This section also clarifies that the arbitrator or judge may award any fees and costs incurred to the unit owner against the board or board members, instead of the association.

CHAPTER 16-119.7 CONDOMINIUMS – MANAGING AGENT

Section 16-119.7-1 No registration required. Specifies that individuals who assist with the conduct of Condominium Managing Agent ("CMA") activities are excluded from the statutory definition of "managing agent." These persons include employees of an association, employees of registered CMAs, and persons independently contracted for certain described services that have no access to association funds. "Access" is defined to include the receipt or deposit of association funds, issuance of checks using association funds, or signature authority on any association bank account.

Section 16-119.7-2 Managing agent; bookkeeper; accountant. Implements the Commission's informal non-binding interpretation prescribing requirements and standards for associations that elect to use an accountant or bookkeeper. This section also specifies that the accountant or bookkeeper is not required to register with the

Commission as a CMA, subject to submission of an executed board resolution acknowledging that the accountant or bookkeeper has no fidelity bond nor has access to association funds.

Section 16-119.7-3 Conduct. Clarifies the scope of a CMA's statutory designated "fiduciary" role with respect to a property managed. This section proposes that a CMA shall not accept any compensation, commission, rebate, or any expenditure for or from a unit owner, without the owner's knowledge and written consent. Where there is a written agreement to do so, a CMA shall complete the registration and reregistration of an association with the Commission. Subsection (c) provides that the CMA shall be responsible for its employee's and agent's full compliance with the real estate licensing law, HRS Chapter 467, the Condominium Property Act, HRS Chapter 514B, and HAR Chapters 16-119.1 through 16-119.8. In addition, this section requires CMAs to have written policies on handling records, complaints, and requests for mediation or arbitration, to deescalate and minimize conflicts between parties.

CHAPTER 16-119.8 CONDOMINIUMS – ASSOCIATION REGISTRATION

Section 16-119.8-1 Registration of an association. Provides for the proper identification of an association with six or more units. Each condominium project or its association must register with the Commission using the same name as it appears in the declaration or amended declaration. Associations that have incorporated must also register with the DCCA Business Registration Division. This section also clarifies that the board is responsible for registering and reregistering an association pursuant to HRS §514B-103, but may delegate in writing this responsibility to a CMA.

Section 16-119.8-2 Failure to provide evidence of fidelity bond. Clarifies HRS §514B-103(b) and the Commission's authority to terminate an association's registration for non-compliance of the fidelity bond requirements.

Section 16-119.8-3 Fidelity bond; deductible. Describes evidence of a current fidelity bond to include an insurance company's certification, submitted upon Commission's request, certifying that the association of unit owners has obtained the required bond; that the bond names the association as the certificate holder; that the fidelity bond names only the association as the insured; that the bond policy excludes any criminal conviction endorsement; whether the bond provides a deductible amount; and requires an association's board to provide unit owners a notice detailing the amount of the deductible, and any other changes in the fidelity bond coverage. The proposed section would provide a more efficient regulatory alternative and cure the imbalance between the public benefit and the time and cost spent on compliance.

Section 16-119.8-4 Fidelity bond exemption for an association. Clarifies that all association fidelity bond exemptions expire at the conclusion of the biennial registration period and shall be reapplied for each biennial registration period at least thirty days prior to the biennial registration deadline.

Section 16-119.8-5 Fidelity bond exemption. Enumerates three Commission-approved exemptions and the respective requirements to obtain an exemption from the association fidelity bond requirement: (1) Sole Owner, (2) 100% Commercial Use, and (3) twenty or fewer units. This section also expands on associations with twenty or fewer units by providing separate requirements for associations depending on the precise number of units, amount of reserve funds, and annual budget.

Section 16-119.8-6 Registration application. Clarifies that a completed association registration or reregistration application includes the signature of an authorized officer of the association, payment of the correct fee amount, payment of any applicable penalties, documentation of current evidence of a fidelity bond, or an exemption, and other documents and information upon the request of the Commission. This section also requires the association to make available for review, to any unit owner upon request, the registration and reregistration application filed with the Commission, subject to the unit owner paying a reasonable cost for handling the copy request.

Section 16-119.8-7 Availability of association's records, documents, and information. Requires an association to biennially provide a summary of all records available to unit owners, including information as to whom a request for such information may be made of, where the requested information and documents will be made available, and when the information and documents shall be made available for examination and copying, in accordance with HRS Chapter 514B. This section also requires an association's board or CMA to redact information that would constitute an unwarranted invasion of privacy or violate other state or federal laws.

Section 16-119.8-8 Deposit of association funds. Codifies the Commission's informal non-binding interpretation on the term "located in the State" with regard to financial institutions deemed located in the State and whose deposits are insured by agencies of the State.

II. Small Business Impact Statement, Pursuant to Section 201M-2, HRS:

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

We anticipate that condominium developers, Condominium Managing Agents ("CMA"), and possibly Associations of Unit Owners ("AOUO") fall under the HRS §201M-1 definition of "small business". As such, the requirements proposed in HAR

Chapters 16-119.1 through 16-119.8 may affect these entities through direct and/or indirect cost increases.

The proposed rules intend to provide more clarity and transparency within condominium purchase documents, such as the Developer's Public Report ("DPR"); thus, prospective purchasers of condominium units are anticipated to directly benefit from the rules. Additional transparency extends to owner requests for AOUO documents, e.g., budgets and reserve studies, which are anticipated to directly benefit unit owners and condominium self-governance as a whole.

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

Condominium developers are persons or entities who undertake to develop a real estate condominium project. Before a developer can begin sales of any units to the public, the Commission must issue an effective date for a DPR. The report, prepared by the developer, discloses all material facts about the project. The proposed rules shorten certain timelines for developers to submit documents with the DPR. Developers who miss these deadlines would be required to obtain and submit new copies of the required documents. The proposed rules also intend to ease the readability of the DPR and related documents, which may involve additional fees should the developer require and contract with an attorney for review.

CMAs are persons retained as an independent contractor, for the purpose of managing a condominium. AOUOs are the collective unit owners of the condominium project. As AOUOs contract with CMAs, direct or indirect cost increases borne by the CMA generally pass down to the AOUO. The proposed rules further establish various budgetary and recordkeeping requirements, which may involve additional fees for CPA review, reserve study assistance, and/or property management services.

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

Increases to direct and indirect costs depend on the timeliness of the developer, size of the condominium project, and administration of the AOUO. Not all developers, CMAs, and AOUOs, are anticipated to incur any cost increases; however, the following estimates were researched and are provided in the event a cost increase is incurred.

Condominium Developers: Approximate direct costs may increase by $300, and indirect costs may increase between $2,250 and $10,000.

CMAs and AOUOs: Approximate direct costs may increase between $2,000 and $9,000, and indirect costs may increase between $400 and $800.

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?**

   Monetary benefits to the Department are not anticipated.

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 part of the Commission's rulemaking efforts, the Commission formed a "Blue Ribbon Committee" comprised of various stakeholders, including small business owners, who may be impacted by the adoption of administrative rules relating to condominiums. The Blue Ribbon Committee was tasked with discussing and recommending possible rule language to implement HRS Chapter 514B.

   After several years of deliberation by the Blue Ribbon Committee, the attached draft rules were compiled and presented to the Commission through the Condominium Review Committee at its meetings on December 12, 2018 (Chapters 16-119.1 through 16-119.8), July 10, 2019 (Chapters 16-119.2 and 16-119.8), and September 11, 2019 (Chapter 16-119.1 and chapter titles). Through the forum of these public Commission meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process, we hope to address any concerns.

6. **How the agency involved small business in the development of the proposed rules?**

   Members of the Blue Ribbon Committee included small business owners, organizations that represent small businesses, and individuals who may be impacted by the adoption of administrative rules. In addition to the public Commission meetings and availability of the minutes of those meetings, the public hearing will afford all interested small business owners and persons the opportunity to comment on the proposed rules.

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

   There are no mandated federal, state, or county standards applicable to this area.

III. Other Alternatives in Lieu of Proposed Rules:

It appears there are no alternatives to the proposed rules for HRS Chapter 514B. This chapter currently has no administrative rules. The proposed rules were drafted with the input of various stakeholders across the condominium community over several years and are intended to effectuate and supplement the provisions of HRS Chapter 514B. The proposed rules are not intended to change the substantive law. Should concerns arise in the public hearing, the Commission will consider whether certain provisions could be amended or removed without compromising consumer protection.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

The Department submits these proposed rules and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

NA:KCK:tn

Attachment

cc: Ahlani K. Quiogue, Licensing Administrator
Neil Fujitani, Supervising Executive Officer
Kedin C. Kleinhans, Senior Condominium Specialist

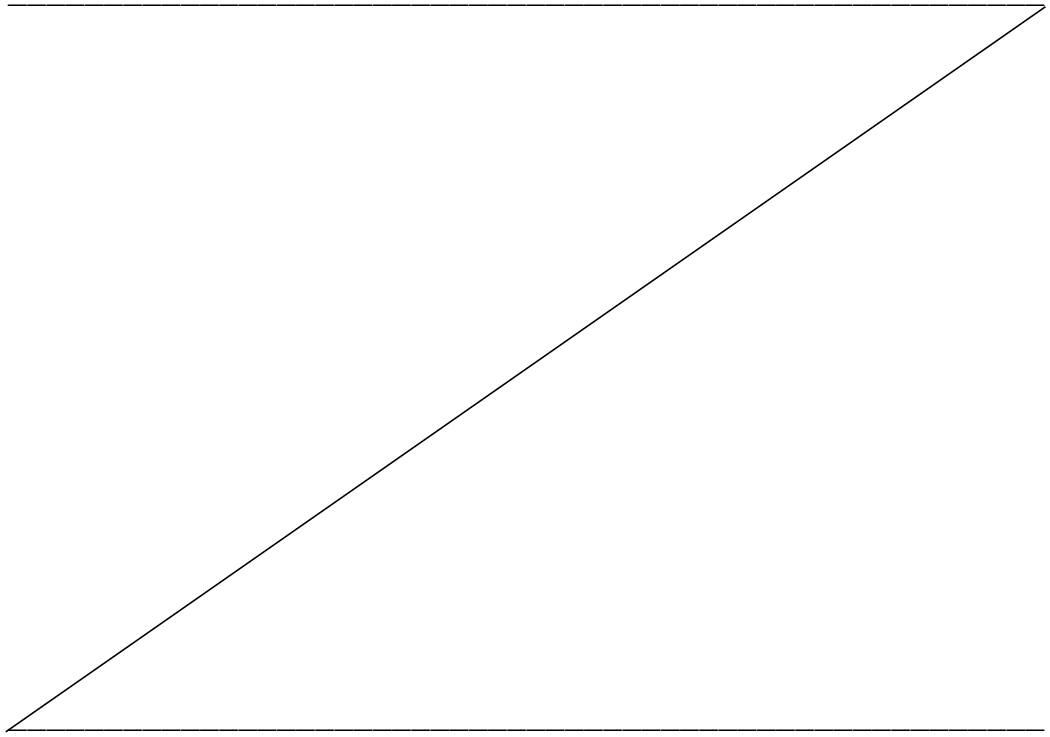
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Repeal of Chapter 16-107 and
Adoption of Chapters 16-119.1, 16-119.2, 16-119.3,
16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 16-107, Hawaii Administrative Rules, entitled "Rules Relating to Horizontal Property Regimes", is repealed.

2. Chapter 16-119.1, Hawaii Administrative Rules, entitled "Condominiums - General Provisions", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.1

CONDOMINIUMS - GENERAL PROVISIONS

§16-119.1-1 Applicability
§16-119.1-2 Severability
§16-119.1-3 Objectives
§16-119.1-4 Definitions
§16-119.1-5 Commission forms
§16-119.1-6 Filing of other documents and information
§16-119.1-7 Abandonment of incomplete registration application
§16-119.1-8 Documents and information

§16-119.1-1 Applicability. Chapters 16-119.1 through 16-119.8 shall apply only to chapter 514B, HRS, and this chapter shall apply to chapters 16-119.1 through 16-119.8, which chapters must be read in conjunction. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-2 Severability. If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that

decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-3 Objectives. The objectives of chapters 16-119.1 through 16-119.8 are to:

(1) Clarify and implement chapter 514B, HRS;

(2) Protect the public; and

(3) Serve the public interest. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-4 Definitions. As used in this chapter:

"Association" has the same meaning as in section 514B-3, HRS.

"Building permit for the project" as required by section 514B-92(b)(3)(C)(ii), HRS, includes a building permit that could be less than a final building permit as permitted by the county.

"Board" has the same meaning as in section 514B-3, HRS.

"Certificate of occupancy" means the final or temporary certificate of occupancy issued by the appropriate county agency for the structure or structures constructed on the project site.

"Certify", "certified", or "certification" means affirming or an affirmation as to the facts being true to the best of the person's knowledge and belief.

"Commission" means the real estate commission.

"Condominium" has the same meaning as in section 514B-3, HRS.

"Condominium property regime" has the same meaning as "condominium" in section 514B-3, HRS.

"Controlling interest" as used in section 514B-3, HRS, in defining "developer" includes a financial or voting interest or both.

"Department" means the department of commerce and consumer affairs.

"Developer" has the same meaning as in section 514B-3, HRS.

"Director" means the director of the department.

"Evidence of recordation" means a file-marked dated copy of the recorded document from the bureau of conveyances or office of the registrar of the land court or a certification of the recordation from a title insurer authorized to conduct business in this State pursuant to article 20, chapter 431, HRS.

"Financial institution" has the same meaning as in chapter 412, HRS.

"First unit conveyance" as used in sections 514B-102 and 514B-134(a), HRS, means the initial transfer of legal or equitable title from the developer to a person other than the developer or an affiliate of the developer.

"House rules" means rules adopted by an association or a board.

"Maintenance fee", unless otherwise provided in the declaration or bylaws, means an association's regular monthly assessment, including any special assessment for "common expenses" as defined in section 514B-3, HRS. "Maintenance fee" does not include any other special assessment, late charges, fines, penalties, interest assessed by the association, liens arising out of the regular monthly maintenance assessment, or fees and costs related to the collection or enforcement of the assessment, including attorney fees and court costs.

"Offer for sale" is any attempt to encourage a person to acquire any legal or equitable interest in a project or proposed project unit, including by any advertisement, inducement, solicitation of letters of intent to purchase, the giving of the selling agent's name, address, or telephone number regarding a project or proposed project unit, or any attempt to encourage a person to acquire any legal or equitable interest in

a project or proposed project unit. Preregistration solicitation pursuant to section 514B-85, HRS, is excluded from this definition. An offer for sale includes sales contracts, agreements of sale, reservation agreements, and options to purchase.

"Over the telephone" as used in section 514B-149(d), HRS, does not include a transfer made pursuant to prior written board authorization allowing the use of an electronic device or medium to transfer association funds between accounts that results in a written record of instructions made in the regular course of business.

"Project" has the same meaning as in section 514B-3, HRS.

"Sale [of] any units" as used in section 514B-51, HRS, means the initial sale to a member of the public, excluding a sale, transfer, or conveyance of a unit to a co-developer or affiliate of the developer. "Sale [of] any units" does not include the sale, transfer, or conveyance of a unit made pursuant to the registration exceptions of sections 514B-51(b) and 514B-81(b), HRS.

"Serious illness" as used in section 514B-98.5(b)(1), HRS, means an illness of any owner-occupant who executed the affidavit or any other person who was to or has occupied the residential unit which illness is certified by the treating United States-licensed physician of the affiant or the person who is or was to occupy the unit in a detailed writing as arising after the date of the affidavit and meets three criteria: not previously known; serious; and likely to exist for at least the remainder of the required owner-occupant period. The certification shall also state the reason the person is not able to occupy the unit. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-51, 514B-81(b), 514B-85, 514B-92(b)(3)(c)(ii), 514B-98.5(b)(1), 514B-102, 514B-134(a), 514B-149(d))

§16-119.1-5 Commission forms. An application for registration submitted pursuant to chapter 514B, HRS, shall be made on the most recent commission approved form as provided by the commission. The commission's form shall be used in its entirety and shall not be altered. If more space is needed, additional blank pages may be used. Additional pages shall be designated by the page number and any subsequent letter; for example, page 1a, page 1b, page 1c, etc. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-103)

§16-119.1-6 Filing of other documents and information. The commission may require an applicant to submit additional documents and information in support of or to complete any registration application. The commission may also require proof of any certified statement or information provided or submitted to the commission. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61(a), 514B-84, 514B-103)

§16-119.1-7 Abandonment of incomplete registration application. (a) An "incomplete application" as used in section 514B-52(c), HRS, or submitted pursuant to section 514B-56, HRS, includes an application that does not provide the commission with the required information, supporting documents, and adequate and accurate inclusion and disclosures of material facts, material changes, and pertinent facts as required by chapter 514B, HRS.

(b) Time spent by a developer curing an incomplete application prior to assignment to a private independent consultant may or may not be included as part of the six months referenced in section 514B-52(c), HRS, at the discretion of the commission. The developer shall submit to the commission written evidence of the developer's good

faith efforts to timely cure an incomplete application prior to assignment to an independent private consultant. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-52(c), 514B-56)

§16-119.1-8 Documents and information. Upon the commission's issuance of an effective date for a developer's public report and any amendments thereto, the developer shall make available at the developer's office or online the public documents submitted by the developer to the commission pursuant to the condominium project registration requirements of chapter 514B, HRS, for review by prospective unit owners and purchasers. One year after the developer completes the initial sale of all units in the project, the developer may elect not to make the public report and any amendments thereto available online, provided the developer shall keep and maintain the public report and any amendments thereto for at least ten years or such other period specified in the sales contract or section 514B-70, HRS, after the one year." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§92F-12(15), 514B-70)

3. Chapter 16-119.2, Hawaii Administrative Rules, entitled "Condominiums - Advertisement", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.2

CONDOMINIUMS - ADVERTISEMENT

§16-119.2-1 Advertisement
§16-119.2-2 Use of developer's public report for advertising
§16-119.2-3 Name on advertising

§16-119.2-1 Advertisement. (a) "Advertisement" is a written or verbal statement or communication by or on behalf of a developer or developer's affiliate which is intended or designed to generate inquiries or offers to purchase or induces or attempts to induce a prospective unit owner or purchaser to purchase. The term includes but is not limited to: direct contact; publications; radio or television broadcasts; mass media; videos; electronic media including electronic mail, text messages, social media, social networking websites, and the internet; business stationery, cards, and signs; billboards; notices; brochures; flyers; information sheets; newspapers; magazines; mailings; announcements; displays; and verbal or physical presentations, including drawings, renderings, or models.

(b) Discussions or other communications with existing tenants initiated by a building owner or developer regarding possible conversion of the

building to condominium status is not an advertisement.

(c) An advertisement shall indicate that the project is a condominium. An advertisement shall not give any appearance that the project is subdivided or a subdivision unless the project is legally subdivided or a subdivision. Terms commonly used to describe separately subdivided lots or parcels, including but not limited to, "lot", "parcel", and "single family" shall not be used alone to identify, describe, or designate individual units and limited common elements. The descriptive terms "single family", "home", or "residence" may be used to describe individual units only if used in conjunction with the word "condominium", e.g., "condominium homes" or "single family condominium residences".

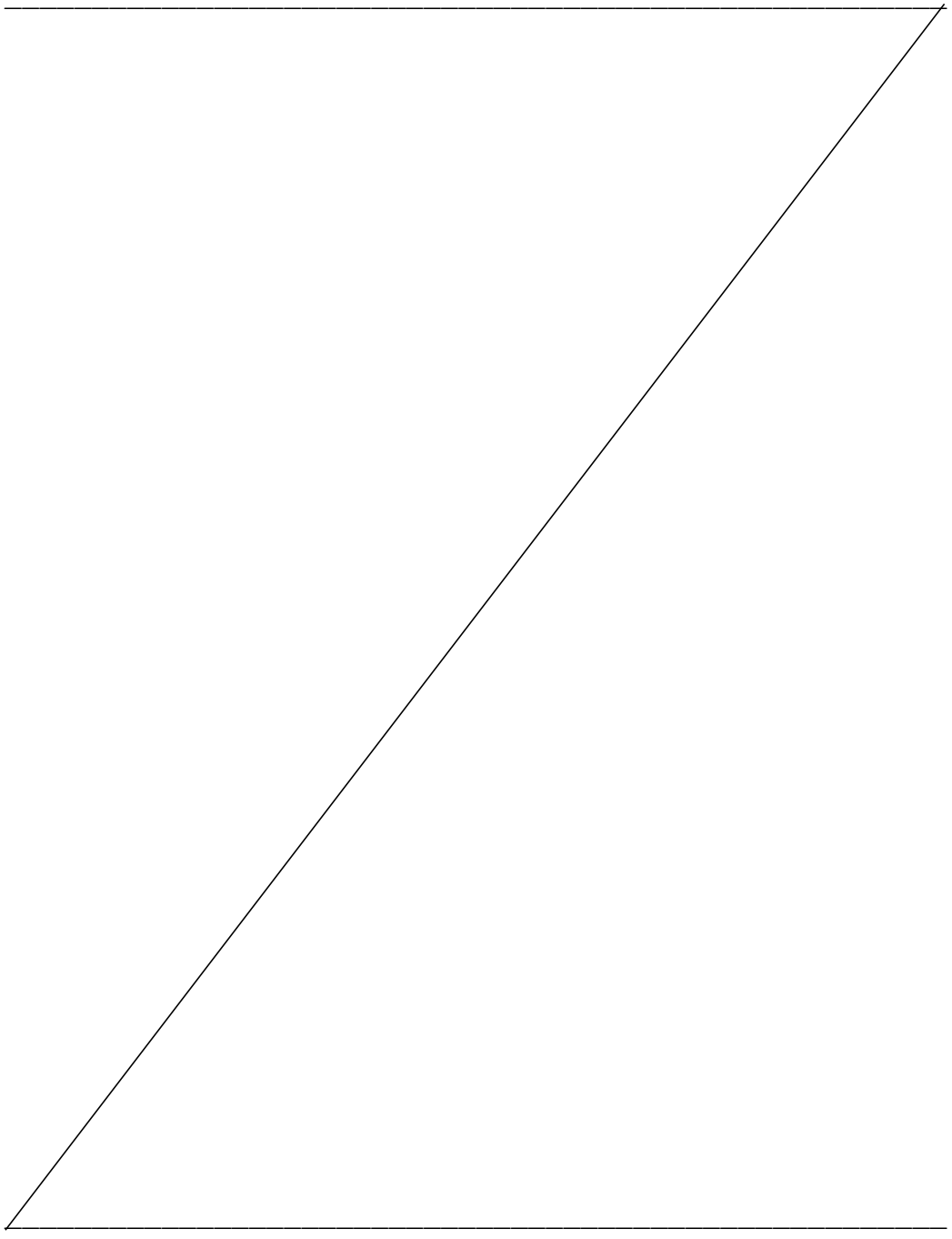
(d) Unless approved as a subdivision by the county government, all documents including declarations, bylaws, maps, advertising, developer's public reports, amendments, exhibits, and any other document provided to a prospective purchaser or purchaser, or made part of a public record, shall not have references or provide illustrations that indicate or imply that the condominium project is a subdivision or that the lots are subdivided lots.

(e) Dotted or dashed lines may be used to delineate limited common element or common element boundaries. A written disclosure shall appear beside dotted or dashed lines stating that the lines are for identification purposes only and should not be construed to be the property lines of legally subdivided lots. Solid lines shall not be utilized to delineate limited common elements or common elements. Any metes and bounds descriptions or square footage figures of land areas shall be clearly and specifically identified as the condominium project's total land area, its common element land area, or as the limited common element land area. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

§16-119.2-2 Use of developer's public report for advertising. The developer's public report shall not be used for advertising purposes unless the developer's public report is used in its entirety. No portion of the developer's public report shall be underscored, italicized, or printed in larger or heavier type than the remainder of the developer's public report, unless the true copy of the developer's public report issued an effective date by the commission shows likewise. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57, 514B-60, 514B-94)

§16-119.2-3 Name on advertising. An advertisement must use the same project name as indicated on the first page of the application for the developer's public report, if any, and the declaration." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

4. Chapter 16-119.3, Hawaii Administrative Rules, entitled "Condominiums - Project Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.3

CONDOMINIUMS - PROJECT REGISTRATION

§16-119.3-1	Name of the condominium or project
§16-119.3-2	Unit sale and project registration
§16-119.3-3	Effective dates; developer's public reports; owner builder exemption
§16-119.3-4	Copies of developer's public reports
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§16-119.3-16	Registering new units
§16-119.3-17	Cooperatives

§16-119.3-1 Name of the condominium or project. Unless otherwise permitted by law, the name or proposed name of any condominium or project submitted for registration in accordance with chapter 514B, HRS, and chapters 16-119.1 through 16-119.8 shall not be substantially like any name registered with the business registration division of the department and any name used by a condominium or project registered with the commission. The developer shall certify to the commission that the developer has conducted a search of the name or proposed name and that the public records of the commission and the business registration division of the department do not indicate that the name or proposed name is:

(1) Registered with the business registration division;

(2) Currently used by a condominium or project registered with the commission; and

(3) Substantially like a name registered with the business registration division of the department and any name used by a condominium or project that is registered with the commission.

Use of a commission registered name for purposes other than the condominium or project constitutes a false or misleading statement in violation of section 514B-94, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-94)

§16-119.3-2 Unit sale and project registration. (a) The project registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to the sale of units in a project for the first time to the public. These requirements do not apply to resale of units in a project after sale of units for the first time to the public. Parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to sales of units subsequent to a bulk sale, transfer, or conveyance to a co-developer (including a co-tenant)

and to sale of units to the public following the dispositions of the units made pursuant to sections 514B-51(b)(1), 514B-51(b)(3), and 514B-81(b), HRS.

(b) A project is deemed registered with the commission when the commission:

(1) Determines that the developer has submitted all the documents and information concerning the project and the condominium property regime as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, and as otherwise required by the commission; and

(2) Issues an effective date for the developer's public report.

The commission may consult with private consultants pursuant to section 514B-64, HRS, in making the required determinations. [Eff] (Auth: HRS §514B-61) (Imp: part IV and part V of chapter 514B)

§16-119.3-3 Effective dates; developer's public reports; owner builder exemption. The commission shall not issue an effective date for those units included in the project registration application that are subject to the provisions of the owner builder exemption of chapter 444, HRS, except the commission may issue an effective date for any units included in the developer's public report because of an eligible unforeseen hardship as determined by the contractor's license board pursuant to section 444-2.5, HRS. Upon the expiration of the owner builder one-year moratorium and prior to offering any units for sale that were the subject of an owner builder exemption, the developer shall amend the developer's public report and obtain an effective date for an amendment or an amended developer's public report. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-54, 514B-56, 514B-57, 514B-58, 514B-59)

§16-119.3-4 Copies of developer's public reports. Within thirty days of the issuance of an effective date for a developer's public report, amendment, or amended developer's public report, the developer shall provide the commission with copies of the public report, amendment, or amended public report at no charge. The commission shall determine the number of copies. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57)

§16-119.3-5 Bulk sale; portion of developer's inventory. (a) A bulk sale includes the sale or transfer in bulk of all or a portion of the developer's entire inventory to a purchaser who is a developer with a transfer, assignment, or conveyance of any or all the developer's reserved rights to change, alter, or modify the condominium property regime or project.

(b) A bulk sale shall not have a single unit as remaining inventory. Any remaining inventory must include two or more units. [Eff] (Auth: HRS §§237-43, 514B-51) (Imp: HRS §514B-81)

§16-119.3-6 Filing of parking plan. The parking plan shall comply with county codes and ordinances, federal, state, and commission requirements, and specify whether each stall is for a compact, parallel parking compact, tandem, or regular size vehicle, including disability accessible, and covered or uncovered. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-33, 514B-57)

§16-119.3-7 Lost or destroyed plans. For an existing structure, where the plan of the building or buildings filed pursuant to section 514B-34, HRS, is

lost or destroyed, the commission may accept a site plan, floor plan of each floor, and elevation plan along with an as-built certificate of a Hawaii-licensed architect or engineer. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-34)

§16-119.3-8 Method of computing percentage of common interest. At the time of submitting an application for registration of a project, the developer shall submit a written explanation of the method or formula used in computing the percentage of common interest appurtenant to the condominium units. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-37)

§16-119.3-9 Metes and bounds description. Limited common element areas with no visible demarcations, physical boundaries, or permanent or structural monuments, including roads, walls, fences, and parking stall striping shall be described in the condominium map by metes and bounds. The commission may accept a Hawaii-licensed land surveyor's certification of the metes and bounds as a supplement to the required architect or engineer statements submitted pursuant to section 514B-34, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33)

§16-119.3-10 Method of computing floor area. The floor area of the unit shall be computed and reported in the declaration and developer's public report as net living area. The reported net living area of the enclosed portion of the unit shall be a reasonable representation. Net living area of a unit shall be measured from the interior surface of the unit perimeter walls and shall exclude any area

occupied by a load bearing structure. In a double construction wall, the perimeter wall means the inside double wall. Lanais, patios, storage areas, or garages that are considered part of the unit shall be computed and reported separate from the enclosed net living area. Boundaries of units shall minimally be described in accordance with section 514B-35, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-34, 514B-35, 514B-54)

§16-119.3-11 Filing of other documents. The commission may require filing of other documents, papers, data, and information to complete the condominium registration file. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-103)

§16-119.3-12 Signature on an application for registration; developer's public report; other documents. (a) Subject to the penalties of section 514B-69, HRS, the developer shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS. Where there is more than one fee owner or lessor submitting the land to the condominium property regime, all the fee owners or lessors shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS, and the commission. Fee owners or lessors may execute a power of attorney permitting one or more co-owners or co-lessors to sign on their behalf.

(b) A person with any other right, title, or interest in the land electing to subordinate that person's interest to the condominium property regime,

other than a lender, shall also sign the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS, and the commission indicating that person's subordination and consent to the creation of the condominium property regime and registration of the condominium project. Any recorded document joining in or subordinating a person's interest to the declaration shall also be submitted to the commission as part of the project registration application.

(c) Where the developer is a person or entity other than the fee owner or lessor, the person or entity shall submit evidence indicating the fee owner's or lessor's consent and agreement to the creation of the condominium property regime and the project registration and sale. Evidence includes an executed declaration, power of attorney, or agreement between the developer and fee owner or lessor authorizing the developer to create and register the project with the commission and the sale of units in the condominium property regime or project.

(d) The developer's name and signature on the developer's public report shall be the same name as the signatory to the executed declaration or in the name as otherwise specifically allowed by a duly executed notarized power of attorney, entity resolution, or other document.

(e) The required signatures may be obtained on separate additional signature pages of the developer's public report provided that each signatory makes the same required declarations as required by the commission approved form. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-31, 514B-52, 514B-54)

§16-119.3-13 Amendments to the developer's public report. (a) Within thirty days of any changes, material or pertinent or both, to the information and documents included in or omitted from the developer's public report, the developer shall

submit to the commission an amendment to the developer's public report or an amended developer's public report clearly reflecting and disclosing the changes contained in or omitted from the developer's public report together with such supporting information as may be required by the commission.

(b) Unless the commission determines otherwise, a developer shall:

(1) Include in an amendment no more than two material changes or no more than five pertinent changes to a developer's public report. If there are more than two material changes or five pertinent changes, a full amended developer's public report is required;

(2) Submit a full amended developer's public report following the submittal of two consecutive amendments unless the amendment or amendments pertain solely to updating the name and address of the project or the address, electronic mail, and telephone number of the developer's agent if that agent relocates or changes its name where the agent remains the same legal entity or both. A full amended developer's public report is a restated developer's public report including all amendments. A developer may elect to submit a full amended developer's public report in lieu of an amendment; and

(3) Submit with any amendment a title report dated not more than forty-five days prior to the date of filing of any proposed amendment with the commission. A developer may request that an administrative review be conducted by commission staff to determine that a proposed amendment does not warrant the submission of a current updated title report. Examples warranting the non-submission of a current updated title report include but are not limited to the

correction of typographical errors, non-substantive errors, or both.

(c) If the current updated title report reflects no further encumbrances against title, the developer shall include language in the amendment or amended developer's public report that there are no further encumbrances against title.

(d) In determining whether a prospective purchaser or purchaser cannot easily ascertain, determine, or understand the changes included or added by any proposed amendment or included in any amended developer's public report, the commission may consider the totality of the factors as set forth in this subsection.

(e) Amendments made to a developer's public report for a project containing any existing structures being converted to condominium status which may be occupied for residential use and that have been in existence for five years or more shall include at minimum the following disclosures:

(1) Any outstanding notices of uncured violations of any building, plumbing, and electrical codes and of any other federal, state, and county regulations received or known to the developer within the last six months prior to the submission of the amendment. The update shall include but not be limited to information discovered by a developer's review of relevant federal, state, and county records; and

(2) The estimated cost of curing any building, plumbing, and electrical codes and other federal, state, and county regulations or violations.

(f) Any amendment shall be read together with a previous developer's public report or read by itself as an amended developer's public report. The developer shall provide notice to the prospective purchaser or purchaser and the principal broker of any amendments made to the developer's public report. [Eff] (Auth: HRS §514B-61) (Imp:

HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61, 514B-83)

§16-119.3-14 Annual report. (a) The annual report required by section 514B-58, HRS, shall be filed at least thirty days prior to the anniversary date of the effective date of a developer's public report or if amended, at least thirty days prior to the anniversary date of the effective date of the most recent amendment or amended developer's public report.

(b) In addition to other information updated and reported pursuant to section 514B-58, HRS, and as required by the commission, a developer shall also update and report that the developer:

(1) Has conducted a current search of all relevant county, state, and federal public records, including administrative agency records, and that the respective records currently do not indicate any uncured violations of any building, plumbing, and electrical codes or other violations;

(2) Has not received any notice of violations or notice of any county investigation of any uncured building, plumbing, and electrical code violation or other violations; and

(3) Does not have any actual knowledge of any unreported building, plumbing, and electrical code violation or other violations.

(c) The initial fee for filing an annual report with the commission shall be pursuant to chapter 16-53 and thereafter shall be in an amount as adopted in rules by the director. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-58)

§16-119.3-15 Spatial units. (a) A developer shall describe spatial units in any manner that complies with this section, chapter 514B, HRS, and as

required by the commission. At minimum, any description of a spatial unit shall specifically comply with the definition of unit as provided in sections 514B-3, 514B-32(a)(7), and 514B-32(a)(13), HRS, and any other applicable sections of chapter 514B, HRS, and chapters 16-119.1 through 16-119.8 and include that the unit:

(1) Is designated for separate ownership or occupancy, has access to a public road or to a common element leading to a public road, and will have future boundaries in accordance with section 514B-35, HRS;
(2) Contains no structures;
(3) Is filled only with air, water, or both;
(4) Has a location and dimensions with horizontal and vertical boundaries designated by spatial coordinates with beginning and ending points;
(5) Complies with all zoning and building ordinance and codes and all other permitting requirements, including having dimensions not more than county, heights, setbacks, and other requirements; and
(6) Complies with any other commission requirements.

(b) Any description of any permitted alterations to or replacement of a spatial unit shall include a description as to what could be built or replaced in the spatial unit pursuant to the declaration, county zoning and building permitting, and any applicable federal and state laws. [Eff] (Auth: HRS §§514B-57, 514B-61) (Imp: HRS §§514B-3, 514B-5, 514B-32)

§16-119.3-16 Registering new units. Developers may register new units created by dividing previously existing registered units by amendment or amended developer's public report. These newly created units are subject to the fees set forth in chapter 16-53. Developers shall register new units that are created

from previously unregistered property or unregistered units as a new project pursuant to the phasing rules in chapter 16-119.4 herein. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-52, 514B-56)

§16-119.3-17 Cooperatives. Cooperative housing projects converting to condominium status must comply with the registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, this subsection, and as required by the commission. Such projects are not subject to part V(B) of chapter 514B (sales to owner occupants), HRS, and need not provide a broker listing agreement where:

(1) One hundred per cent of the shareholders of record prior to the conversion have agreed to the conversion and will be parties to the submission of the property to the condominium property regime;
(2) Upon conversion, the developer will not sell or offer to sell the apartments or units to the public and the developer is not able to sell or offer to sell the apartments or units to the public;
(3) Existing shareholders and tenants will continue to reside in the apartments or units; and
(4) And upon conversion, the existing tenants are permitted to continue their occupancy of the apartments or units. Furthermore, the developer's obligations to update the developer's public report cease upon conveyance of the condominium units to the former cooperative members who have traded their cooperative share for condominium units." [Eff] [Auth: HRS §514B-61] (Imp: HRS §§514B-51, 514B-54, 514B-83, 514B-84)

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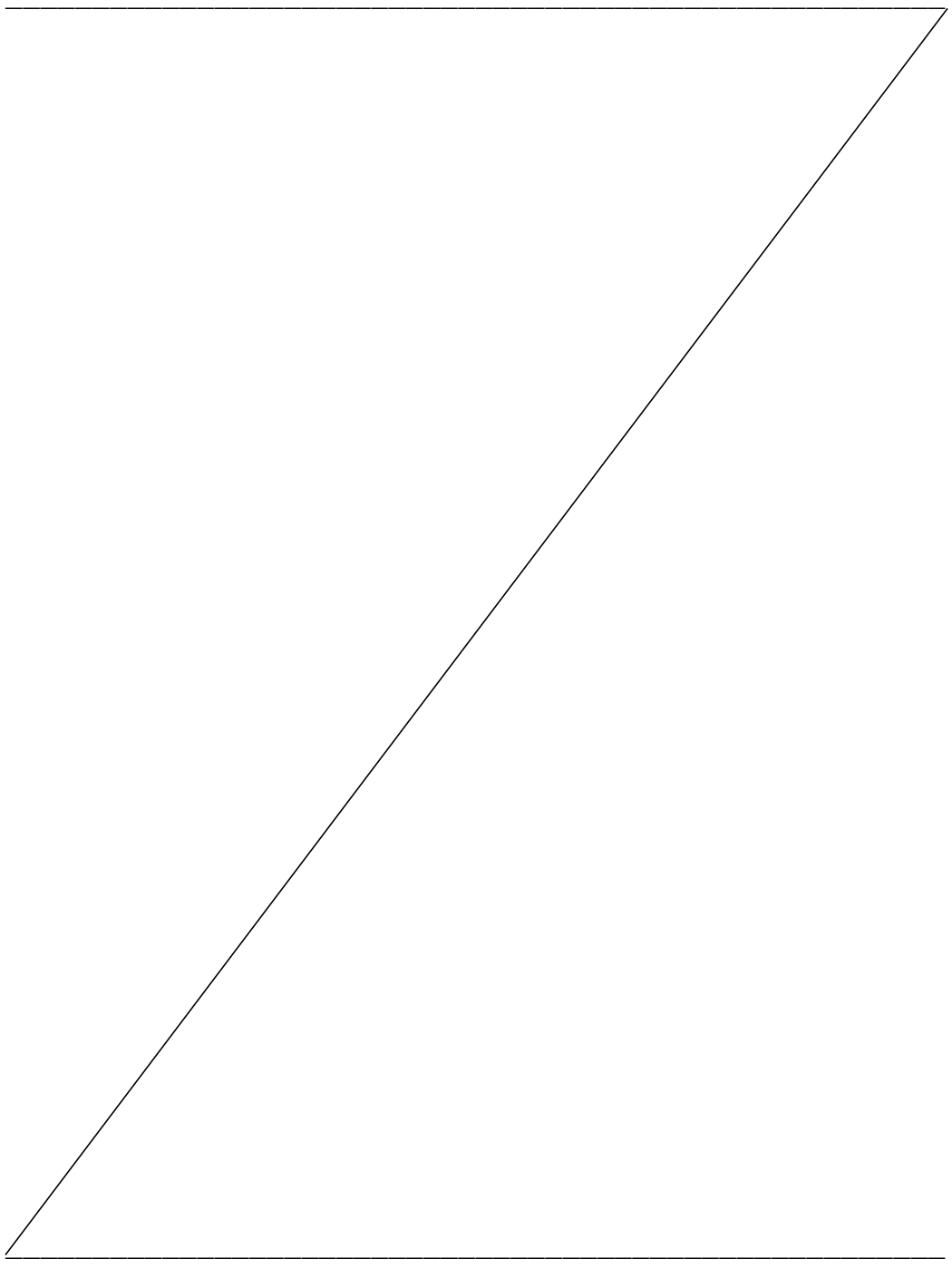
5. Chapter 16-119.4, Hawaii Administrative Rules, entitled "Condominiums - Developer's Public Reports", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.4

CONDOMINIUMS - DEVELOPER'S PUBLIC REPORTS

§16-119.4-1	Project registration application; documents and information
§16-119.4-2	Content of developer's public report
§16-119.4-3	Delivery of developer's public report
§16-119.4-4	Use of purchaser deposits to pay project costs
§16-119.4-5	Completion; performance bond; irrevocable letter of credit alternatives
§16-119.4-6	Reduction of a completion, performance bond, letter of credit, or other alternative security amount for completion of construction

§16-119.4-1 Project registration application; documents and information. (a) To register a condominium property regime or project, a developer shall complete and submit a registration application on a commission prescribed form, which form the commission may amend, including the documents and information concerning the condominium property regime or project as required by sections 514B-54, 514B-83, and 514B-84, HRS, and as otherwise required by chapter

514B, HRS, chapters 16-119.1 through 16-119.8, and the commission.

(b) The commission shall establish a checklist of the documents and information concerning the condominium property regime or project that the developer must complete and submit to the commission.

(c) The checklist required by subsection (b) shall require the developer to submit with the developer's condominium project registration application the following:

(1) A completed application form and project questionnaire executed in accordance with section 16-119.3-12;

(2) Documents and information concerning the condominium property regime or project as required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;

(3) Appropriate filing fees as prescribed by rules adopted by the director;

(4) A title report dated not more than forty-five days immediately prior to the date of submission of the registration application. Where the circumstances necessitate, the commission may require a title report to be updated immediately prior to the issuance of an effective date for a developer's public report;

(5) Draft of the developer's final public report which shall include the information, disclosures, and documents required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission, and shall be executed in accordance with section 16-119.3-12;

(6) Declaration which may be unexecuted and unrecorded;

(7) Bylaws which may be unexecuted and unrecorded;

(8) Condominium map which may be unrecorded with preliminary drawings, including a site plan

prepared at least as required by section 514B-33(a)(1), HRS;

(9) Proposed house rules, if any;

(10) Statement by the developer explaining the method or formula used in computing the common interest appurtenant to the respective units;

(11) Copy of the recorded master deed or master lease, agreement of sale, sales contract, or other document evidencing either that the developer holds the fee or leasehold interest or has a right to acquire same;

(12) Real estate broker listing agreement;

(13) Escrow agreement executed by the developer and escrow company and a summary of the agreement. The agreement shall minimally include provisions for the retention and disposition of purchasers' funds in accordance with the requirements of sections 514B-45, 514B-54(a)(6), 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, and 514B-93, HRS;

(14) Copy of the letter to the planning department of the county in which the project is located transmitting, when requested by the county, true copies of the following documents:

(A) Questionnaire;

(B) Declaration which may be unexecuted and unrecorded;

(C) Bylaws which may be unexecuted and unrecorded;

(D) Condominium map which may be unrecorded; and

(E) Proposed developer's public report stamped "draft" and dated.

The developer shall provide other documents relating to the project as requested by county officials;

(15) For a developer that is an entity:

(A) A certificate of good standing issued by the business registration division

of the department and state of incorporation or formation (if applicable);

(B) A certificate of authority issued by the business registration division of the department for an entity incorporated or formed not within this state; and

(C) A file-stamped copy of a developer's organizational document issued by the business registration division of the department or the state of incorporation or formation (if applicable); for example, corporation, partnership, limited liability partnership, limited liability company, or joint venture. The document shall be dated no more than ninety days immediately prior to the date of submission of the registration application;

(16) Sample copies of the following forms:

(A) Sales contract satisfying, among other requirements, the requirements of section 514B-89, HRS, including provisions disclosing any rights reserved by the developer, and where applicable, a completion deadline specifying a date certain following the expiration of time after the sales contract becomes binding, and other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. A summary of the sales contract shall also be submitted;

(B) Unit deed or lease, condominium conveyance document, or other document conveying title to the purchaser; and

(C) Executed management contract, if any, for managing the operation of the property. The contract shall minimally include the requirements of section

514B-134, HRS, chapters 16-119.1 through 16-119.8, other requirements of chapter 514B, HRS, and the commission;

(17) Copy of any development, co-tenancy or subdivision agreements, master association documents, covenants and restrictions, any other similar documents, and summary of such documents;

(18) Copy of any state, county, or federal permits issued with special conditions, uses, and terms and summary of such documents, including but not limited to water use agreements, conditional use permits, existing use permits, development agreements, coastal management permits, and any other private agreements;

(19) An initial identification or designation of at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section 514B-96, HRS, for any applicable project containing residential units;

(20) Other documents and information concerning the condominium property regime or project as required by the commission; and

(21) Other documents and information as required by the commission's prescribed checklist.

(d) For a project registration application for a project containing existing structures being converted to condominium status, a developer shall submit to the commission all the information and documents required by chapter 514B, HRS, the commission's prescribed checklist, chapters 16-119.1 through 16-119.8, and the commission and the following:

(1) A verified statement by an appropriate county official satisfying the requirements of section 514B-84, HRS, that is signed no more than nine months immediately prior to the developer's submission of the project registration application and proposed developer's public report. The commission may accept alternatives to a verified county

official statement approved by an appropriate county agency including, for example, a building permit report obtained from a county's internet site;

(2) A sample copy of the notice to any existing tenants as to the conversion and termination of any rental agreement pursuant to section 521-38, HRS;

(3) A sample copy of an offering of each residential unit contained in the project for sale first to any individual occupying the unit immediately prior to the conversion as required by section 514B-98(b), HRS;

(4) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the cost of curing these violations and the dates for completion of any repairs in compliance with section 514B-84, HRS;

(5) The statement by a developer required by section 514B-84(a)(1)(A), HRS, which shall include the following:

(A) A description of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer. The commission will not accept a developer's general non-specific statements describing the present condition of all structural components and mechanical and electrical installations as "satisfactory condition consistent with its age" or similar without further explanation of the phrase or characterization; and

(B) A material facts disclosure of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer;

(6) A sample sales contract containing an agreement by the developer to make any repairs required by the county to address compliance with sections 514B-5, 514B-84, and 514B-89, HRS, including repairs that are required to be made to remedy any noted county building, electrical, and plumbing violations reported in any county records or that are the subject of any pending county investigation;

(7) Such other documents and information as required by the commission's prescribed checklist and as otherwise required by the commission; and

(8) A Hawaii-licensed architect's or engineer's required report shall be prepared within six months immediately prior to the submission of the project registration application and minimally include:

(A) Any county planning and permitting information relating to any uncured county code building, electrical, and plumbing violations or other violations or investigation;

(B) A description of any of the structural components and mechanical and electrical installations of the project, which compliant when originally installed, may no longer be compliant with current code requirements and whether the association and the unit owners may be required to bring certain elements up to code as a condition of obtaining permits for future renovation work in the project or unit;

(C) A description of the present condition, including a description of all material facts, of all structural components and mechanical and electrical installations material to the use and enjoyment of the units known to the Hawaii-licensed

architect or engineer preparing the report. Where prescribed by the commission, the Hawaii-licensed architect or engineer may prepare the required report by completing a checklist established by the commission. The completed checklist and any attachments shall be made part of the developer's public report as an exhibit. Any commission prescribed checklist shall at least include and provide the information required by chapter 514B, HRS, and this subsection;

(D) No general statements describing or characterizing the present condition of all structural components and mechanical and electrical installations that are or like "satisfactory condition consistent with its age" without an explanation substantiating the characterization; and

(E) Such other documents and information as may be required by the commission.

The time requirement of more than twelve months after completion of construction as set forth in the definition of "converted" or "conversion" in section 514B-3, HRS, shall be calculated back from the date on which the developer submits to the commission the project registration application.

(e) For a project registration application for a project located in an agriculturally zoned district, in addition to submitting all the information and documents required by subsections (a), (b), (c), and (d), where applicable, the developer shall also submit and include the following information in the developer's public report:

(1) The developer's promotional plan for the project as required by section 514B-84(b), HRS, and a listing of permitted structures and uses in compliance with all applicable state and county land use laws and with

chapter 205, HRS, including section 205-4.6, HRS, where applicable. Any submitted promotional plan may include a general statement to the effect that the structures and uses are those as allowed by the county when accompanied by a listing of such structures and uses in compliance with all applicable state and county land use laws and chapter 205, HRS, including section 205-4.6, HRS, where applicable;

(2) A statement that the project complies with chapter 205, HRS, including section 205-4.6, HRS, where applicable;

(3) A verified statement as required by section 514B-52(b), HRS, signed by a county official no more than nine months immediately prior to the developer's submission of the project registration application and developer's public report;

(4) A sample copy of any applicable farm dwelling agreement, except for spatial units, unless exempted by other law; and

(5) Such other documents and information as required by the commission.

(f) The documents and information required by this section shall be submitted to the commission organized, bound, tabbed, and typed in not less than ten-point type, one-point lead, and with a table of contents and listing of all exhibits. [Eff] (Auth: HRS §§514B-6, 514B-61) (Imp: HRS §§467-7, 514B-3, 514B-5, 514B-32, 514B 33, 514B-34, 514B-45, 514B-51, 514B-52, 514B-54, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-96, 514B-98, 514B-108, 514B-134)

§16-119.4-2 Content of developer's public report. (a) The contents of a developer's public report and exhibits and any amendments thereto prepared by a developer, developer's agent, or pro se

developer shall be written in plain language at a level to be easily understood by a prospective purchaser or purchaser no higher than a twelfth-grade reading level. A developer shall use the Flesch Reading Ease Formula or any generally accepted reading ease readability formula to determine the readability level of the contents of its developer's public report and exhibits and any amendments.

(b) A developer shall include in its developer's public report and any amendments thereto, the information, disclosures, documents, and exhibits as required by this section, chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and any commission prescribed form and checklist. The commission prescribed form or checklist and any amendments thereto shall be made available online at the commission's webpage. At minimum, a developer's public report and any amendments thereto shall include the following:

(1) The documents, disclosures, and information concerning the condominium property regime or project as submitted to the commission pursuant to section 16-119.4-1 herein;

(2) The documents and information concerning the condominium property regime or project as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, this section, as otherwise may be specified by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;

(3) Any material facts, pertinent facts, material changes, omitted information, documents, and disclosures relating to the condominium property regime or project, including any updates;

(4) All information, documents, and disclosures required to be included under the heading "Special Attention - Significant Matters" on the commission prescribed form of the developer's public report as may be amended in accordance with subsection (e). "Special Attention - Significant Matters" includes

any information that may impact the condominium property regime or project, unit, or both, or is required to be included in the developer's public report that should be conspicuously brought to the attention of the prospective purchaser or purchaser. "Special Attention - Significant Matters" shall be conspicuously disclosed on the first few pages of the developer's public report, and may be fully explained or discussed elsewhere in the commission approved developer's public report form; and

(5) All other information, documents, and disclosures which the developer deems necessary to include in the developer's public report.

(c) The commission may establish a list of all information, documents, and disclosures required to be included in the developer's public report under the heading "Special Attention - Significant Matters". The developer shall provide the required information, documents, and disclosures by subject headings together with a summary of the disclosure, and shall provide, if any, an expanded written explanation of the disclosures elsewhere in the developer's public report referenced by page and paragraph number next to the subject headings. Any subject heading used by the developer shall provide a prospective purchaser or purchaser adequate notice of the nature of the information, documents, and disclosures.

(d) The commission's list of all information, documents, and disclosures required to be included in the developer's public report that are deemed "Special Attention — Significant Matters" shall not be construed to be an exhaustive list, constitute the commission's approval or disapproval of the condominium property regime or project, or constitute the commission's representation that all material facts or all material or pertinent changes or both concerning the condominium property regime or the project have been fully or adequately and accurately disclosed. The list does not relieve a developer from

the developer's responsibility to disclose material facts, material and pertinent changes, and other relevant information in the developer's application for registering the condominium project and in preparing the developer's public report and any amendments thereto.

(e) At a regularly scheduled monthly meeting of the commission or its standing subcommittee meeting, the commission may approve or amend the inclusion of any additional information, documents, and disclosures that a developer shall include or disclose in the "Special Attention - Significant Matters" page of the developer's public report.

(f) A "phased project" means any project that contemplates an incremental plan of development or where two or more projects are intended to be completed at different times. Each phase shall be separately registered with the commission. A "phasing plan" means a description of and schedule for developing the project in increments or phases. The contents of a developer's public report for a phased project shall include, but are not limited to, the following disclosures:

(1) Whether the phases will be developed on:
    (A) One subdivided lot; or
    (B) Separately subdivided lots;
(2) Whether the phasing plan contemplates:
    (A) One declaration covering all phases within a project or a separate declaration for each phase and subsequent merger of the phases; and
    (B) Any reduction of units for any phase and the addition of units to another phase.
(3) Whether the merger of the phases will be:
    (A) An ownership merger where the common interests of all units are adjusted as each phase is added and the common facilities of the merged phases are administered by one association of unit owners; or

(B) An administrative merger where the common interests of units are not adjusted as phases are merged, and a formula is provided for sharing of certain common expenses in each of the merged phases and one association of unit owners is created to administer the common elements of the merged phases;

(4) Whether an adjustment will be made to each unit owner's common interest, common profits and expenses, and replacement reserves;

(5) Whether there will be an association of unit owners for each phase or one master association of unit owners for the whole project or both, and if there will be more than one association of unit owners, how each will function in relation to each other;

(6) Whether there will be a master planned community association for the subdivision of which the project is part and the unit owners' rights and obligations;

(7) Whether site work and improvements for the project will be undertaken in their entirety at the onset of construction of the project or in phases, and whether improvements to be built in future phases will be an integral part of improvements built in earlier phases;

(8) Whether any utilities, facilities, or amenities that will be built in future phases will also be for the benefit of unit owners in earlier phases, and what assurances, if any, the developer will provide for the completion of such utilities, facilities, and amenities;

(9) For a phased project on a single subdivided lot, the way future expenses for developing the land and improvements will be allocated and paid; and

(10) Whether the developer reserves the right to add, delete, reconfigure, or redesign future phases, the time limitations that apply to the developer's exercise of such reservation, and the anticipated impact on unit owners when the developer exercises such reservation.

(g) The contents of a developer's public report for a conversion project shall include, but are not limited to, the following disclosures:

(1) Building limitations, restrictions, conditions on rebuilding, and non-conforming structures or uses;

(2) County, state, and federal permitting requirements, if any, including but not limited to, water use agreements, conditional use permits, existing use permits, development agreements, coastal zone management permits, and private agreements;

(3) All information submitted with the application as required by section 16-119.4-1(d) and all disclosures relating thereto; and

(4) And any other applicable disclosures and information.

(h) The contents of a developer's public report for a project in an agricultural district shall include, but are not limited to, the following disclosures:

(1) A specific statement describing how the structures and uses anticipated by the developer's promotional plan comply with all applicable state and county land use laws including section 205-4.6, HRS;

(2) All information submitted with the application as required by section 16-119.4-1(f) and all disclosures relating thereto; and

(3) Any other applicable disclosures and information.

(i) A developer's public report shall also include information about whether a reserve study was done in accordance with section 514B-148, HRS, and chapters 16-119.1 through 16-119.8 in arriving at the estimate of reserve funds necessary to maintain the condominium project. This information shall be specifically included on a developer prepared exhibit of estimates of initial maintenance fees and estimates of maintenance fee disbursements on a commission approved form.

(j) Persons who prepare the developer's public report for a project, including the attorney for the developer and any agent of the developer who is a non-attorney for the developer, shall include in the developer's public report the person's name and identity as an "agent". A developer and a developer's agent shall also provide a business address, business electronic mail address or a designated public electronic mail address, and business phone number. A pro se developer who prepares without the help of a Hawaii-licensed attorney or designated agent the registration application, information, and documents for registering a condominium project pursuant to chapter 514B, HRS, and chapters 16-119.1 through 16-119.8, shall also provide the information required by chapters 16-119.1 through 16-119.8 and the commission and identify the developer as a pro se developer.

(k) An exhibit of a summary of a sample sales contract and an escrow agreement shall at minimum include provisions and conditions consistent with the requirements of sections 514B-45, 514B-86, 514B-88, 514B-90, 514B-91, 514B-92, 514B-93, and 514B-98, HRS, and other applicable requirements of chapter 514B, HRS.

(l) If the developer elects to use a completion deadline connected to the expiration of any time after the sales contract becomes binding pursuant to section 514B-89, HRS, the developer shall notify purchasers in writing of a date certain for the completion date within 30 days of the expiration of any time when the sales contract becomes binding.

(m) Where applicable, all the following documents shall be listed in the developer's public report as documents a prospective purchaser or purchaser should review before signing the sales contract:

(1) Farm dwelling agreement;
(2) Subdivision covenants, conditions, and restrictions;
(3) State and county water use agreements;
(4) Copies of any comments and documents from any state, county, or federal government agency about the project;
(5) Master association declaration and bylaws;
(6) Co-tenancy agreements;
(7) Agricultural dedication;
(8) Shoreline management agreement;
(9) Special management area permit;
(10) Conditional use permit;
(11) License agreements, such as trademark or branding agreements; and
(12) Other related agreements the developer or commission deem necessary.

The commission may request that the developer include in the developer's public report a summary of any of the related documents and any other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. [Eff] (Auth: HRS §514B-61) (Imp: §§514B-45, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-88, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-98, 514B-148)

§16-119.4-3 Delivery of developer's public report. Items specified in section 514B-86(a)(1)(A)(ii), HRS, shall be deemed delivered concurrently and separately provided to a prospective purchaser or purchaser with the developer's public report on the day printed copies are delivered to the prospective purchaser or purchaser or the day the developer makes a download of the required documents available to a prospective purchaser or purchaser who

has elected in a separate writing to receive the required documents other than as printed copies as provided in section 514B-86(a)(1)(A)(ii), HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-86)

§16-119.4-4 Use of purchaser deposits to pay project costs. (a) "Cost of construction", "construction costs", "costs that are required to be paid in order to complete the project", and "other incidental expenses of the project" include those costs enumerated in sections 514B-92 and 514B-93, HRS, and include permitting fees, personnel costs, professional services costs, and any increases in such costs that are required to be paid or anticipated to be paid to complete the construction of the project. Any "cost of construction", "construction costs", and "costs that are required to be paid to complete the project" that have been paid are excluded from "costs". The project's architect or engineer and general contractor shall respectively certify payment of the amount of work completed and paid for.

(b) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A), HRS, includes:

(1) Interim or permanent loan commitments for financing construction costs and costs that are required to be paid to complete the project showing all parties have agreed to the loan and the loan amount. If there is a single agent, all parties shall agree in writing to the named single agent;
(2) Equity funds identified and earmarked specifically for the project;
(3) Purchaser's escrowed deposits as evidenced by a signed escrow agreement indicating the amount deposited in escrow; and
(4) Other funds as required by the commission as evidenced by a signed escrow agreement

indicating the amount deposited in escrow. The commission shall only accept promissory notes where the funds have been escrowed.

(c) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(B) and 514B-93(b)(3)(B), HRS, does not include:

(1) Any projected purchaser's deposits not escrowed;

(2) Interim or permanent loan commitments and other sources of funding from a developer's subsidiary or affiliate, except where a developer's subsidiary or affiliate has irrevocably earmarked funds to pay for all costs to complete the project as evidenced by a notarized declaration filed with any state, other than with the commission, or federal agency;

(3) All funds encumbered for purposes other than those specified in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A) and (B), HRS; and

(4) Other funds as excluded by the commission.

(d) Funds from any interim or permanent loan commitment and any other commission approved source of funds shall be:

(1) Provided as follows:

(A) By a federally-insured financial institution located in this State or by a nationally chartered bank;

(B) By a federally-insured financial institution located in this State or by a nationally chartered bank or any other lending entity in good standing where the entity is qualified to do business; or

(C) Deposited in trust for purposes of sections 514B-92 and 514B-93, HRS, under a written escrow agreement with an escrow depository licensed pursuant to chapter 449, HRS. The escrow agreement and evidence of the deposited

funds shall be submitted to the commission;

(2) Immediately available for use as provided by a written agreement to pay all costs to complete the project as required by sections 514B-92(b)(3) and 514B-93(b)(3), HRS;

(3) Excluded as collateral for other projects or purposes;

(4) Evidenced by a written agreement that is signed by the developer and all other parties to the agreement dated within nine months of the submission. The written agreement shall be submitted to the commission;

(5) Excluded from the funds any portion which has been encumbered for purposes other than to those purposes specified in sections 514B-92 and 514B-93, HRS;

(6) Exclusive of any projected deposits;

(7) Exclusive of interim or permanent loan commitments and other sources of funding from a developer's parent entity, subsidiary, or affiliate, except where a developer's parent entity, subsidiary, or affiliate has irrevocably earmarked funds to pay for all costs to complete the registered project. A developer's declaration of the irrevocable earmarked funds shall be notarized and filed with a state, other than with the commission, or federal agency; and

(8) In compliance with other excluded conditions as may be required by the commission. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-92, 514B-93)

§16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives. (a) A completion or performance bond issued by a non-surety material house shall at minimum contain the following:

(1) The non-surety material house shall be:
    (A) Located in this State;
    (B) Duly qualified and registered to do business in this State; and
    (C) An issuer in the normal course of its business of non-surety completion or performance bonds;
(2) A letter from the project's construction lender, if any, stating that the completion bond or performance bond issued by a non-surety material house is satisfactory to the lender;
(3) A written agreement between the developer and escrow agent that use of purchaser's deposits to pay project costs shall be made in accordance with section 514B-45, 514B-91, 514B-92, or 514B-93, HRS;
(4) Names the commission and the developer as bond obligees;
(5) Bond's obligation to complete the construction contract conditioned on the default of the contractor to faithfully perform the construction contract in accordance with the stipulations, agreements, covenants, and conditions of the construction contract, and any modifications of such, free from all liens and claims and without further cost, expense, or charge to the commission and the developer;
(6) Provision that the bond's obligation also inures to the benefit of all persons entitled to file claims for labor performed or materials furnished;
(7) Provision that upon default of the contractor, all bond funds shall be paid to and disbursed from an escrow account for the completion of construction;
(8) Bond is maintained and continued in full force and effect continuously through the entire period from the beginning to the completion of construction;

(9) Provision that the bond's expiration date is the date when construction is completed;

(10) Provision that the contractor shall immediately amend the amount of the completion or performance bond to cover any significant cost increase to complete construction;

(11) Disclosures in the developer's public report of the developer's use of a non-surety material house completion or performance bond and the restrictions on such use; and

(12) Such other conditions and restrictions as required by the commission.

(b) As used in sections 514B-92(c) and 514B-93(c), HRS, "otherwise qualified, financially disinterested person" includes any third person unrelated to or not affiliated with the developer with financial expertise in accounting or with reviewing budgets, income, and expense documentation.

(c) An irrevocable letter of credit shall at minimum contain the following:

(1) An amount in addition to the amount of the security for the administration of the letter of credit to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees that may be adopted by the director;

(2) The commission and commission's authorized representative as beneficiaries of the irrevocable letter of credit and the only entity which can withdraw funds from the irrevocable letter of credit or which can reduce the amount of the irrevocable letter of credit;

(3) Issued by:

(A) A federally-insured financial institution located in this State;

(B) A nationally chartered bank and confirmed by a state federally insured financial institution; or

(C) An out-of-state federally insured financial institution and confirmed by a state federally insured financial institution;

(4) Where the contractor and developer have failed to complete the project construction, a provision permitting the beneficiaries to draw funds from the letter of credit to complete the project construction;

(5) A provision that the developer or the contractor shall immediately amend the amount of the irrevocable letter of credit to cover any significant cost increase to complete construction;

(6) Provision for the same security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and

(7) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew an irrevocable letter of credit or cause to be issued a new letter of credit in the amount required to complete construction thirty days prior to the expiration of an irrevocable letter of credit.

(d) Any other alternative security shall at minimum contain the following:

(1) An amount in addition to the amount of the security for the administration of any other alternative security to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees shall be adopted by the director;

(2) The commission and commission's authorized representative as the beneficiaries of the security and the only entity which can

withdraw funds from any other alternative security or which can reduce the amount of the alternative security;

(3) A provision that the developer or the contractor shall immediately amend the amount of the other alternative security to cover any significant cost increase to complete construction;

(4) Provision for the same level of security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and

(5) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew any other alternative security or cause to be issued any other alternative security in the amount required to complete construction thirty days prior to the expiration of any other alternative security. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-92, 514B-93)

§16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount for completion of construction. (a) The commission may approve a developer's written request to reduce the security amount of a completion, performance bond, letter of credit, or other alternative security for the completion of construction. The request must contain the following:

(1) For each project or phase, an architect's certification as to the percentage of the project or phase that has been constructed;

(2) Written evidence for each completed project or phase of construction that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;

(3) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's and materialman's lien period, unless the purchaser receives a title insurance policy with a mechanic's lien endorsement; and

(4) An architect's and general contractor's certification as to the percentage of the project or phase remaining to be completed and the dollar amount needed to achieve full completion of the project's construction.

(b) The commission may approve a developer's written request that a submitted completion, performance bond, letter of credit, or other alternative security for the completion of construction be released. The request must contain the following:

(1) An architect's certification that the project has been constructed and completed;

(2) Written evidence that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;

(3) A filed marked court copy of the "Affidavit of Publication of Notice of Completion" and a copy of the notice covering the completion of construction for the entire registered project and the units therein made pursuant to section 507-43, HRS;

(4) The developer's declaration that the mechanic's and materialman's lien period has expired and no application for a lien has been filed; and

(5) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's lien period unless the purchaser receives a title insurance policy with a mechanic's lien endorsement." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-45, 514B-92, 514B-93)

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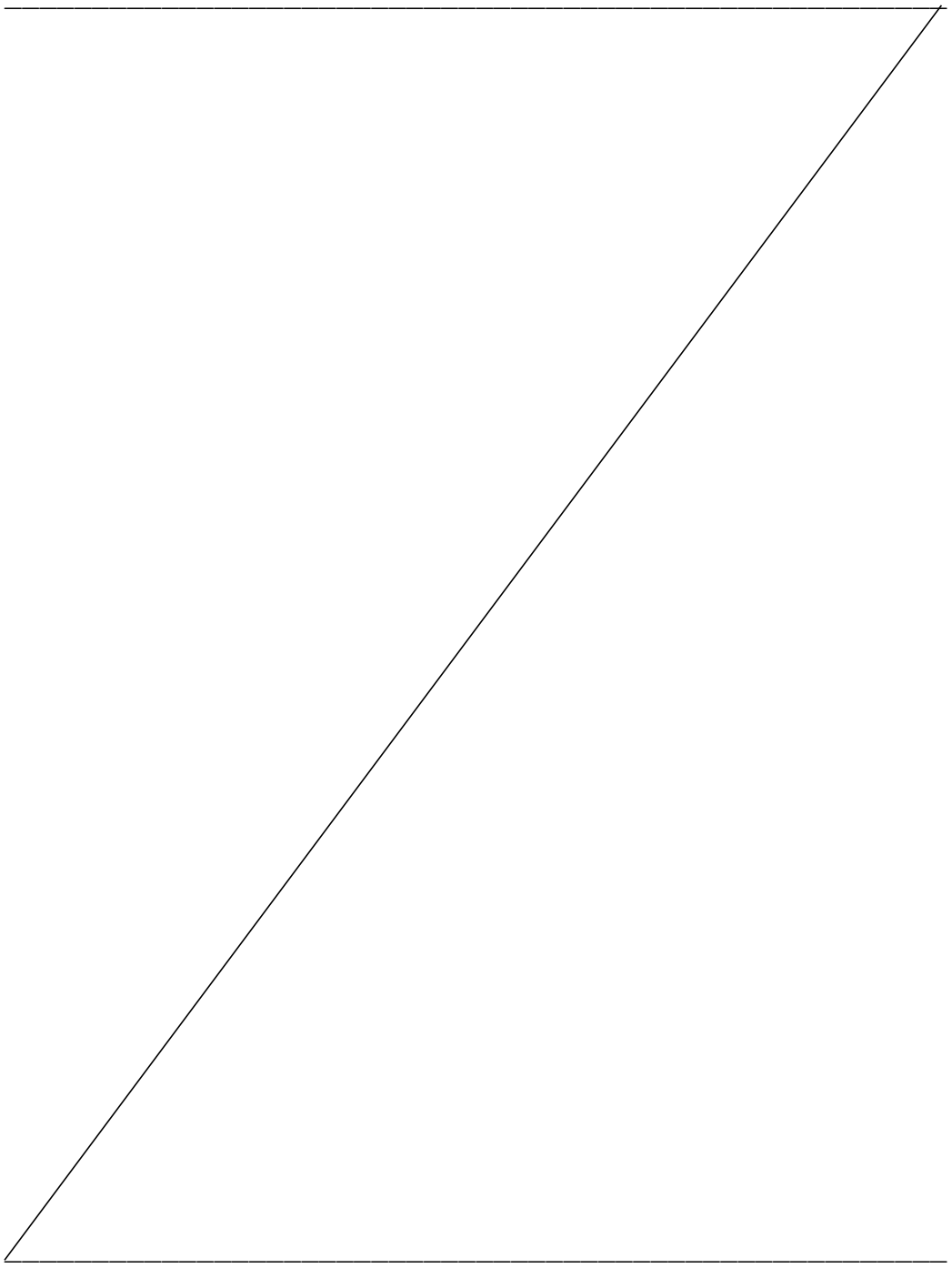
6. Chapter 16-119.5, Hawaii Administrative Rules, entitled "Condominiums - Sales to Owner-Occupant", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.5

CONDOMINIUMS - SALES TO OWNER-OCCUPANT

§16-119.5-1	Exclusions
§16-119.5-2	Sales exempt from owner-occupant requirements
§16-119.5-3	Fifty per cent of units
§16-119.5-4	Offers of sale of residential units
§16-119.5-5	Publication of announcement
§16-119.5-6	Extenuating circumstances affecting an owner-occupant's compliance
§16-119.5-7	Sample copies of forms
§16-119.5-8	Failure to comply
§16-119.5-9	Owner-occupant affidavit

§16-119.5-1 Exclusions. The following are not included in the definition of "residential unit" in section 514B-95, HRS:

(1) Time share units built in a county zoned or designated hotel or resort use;

(2) Leasehold fee interests offered for sale or sold to the unit owners who occupied the unit immediately prior to the leasehold conversion or leasehold fee interests being offered to the association of unit owners; and

(3) The sale of units in a project consisting of nonresidential units where one of the units is a residential unit. [Eff] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-95)

§16-119.5-2 Sales exempt from owner-occupant requirements. Residential projects built in a county zoned or designated hotel or resort area shall be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS, except residential projects situated in Waikiki shall not be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS. [Eff] (Auth: HRS §§514B-6, 514B-61, 514B-98.5) (Imp: HRS §514B-95)

§16-119.5-3 Fifty per cent of units. Two units in a three-unit residential condominium project shall be designated as the units for sale to prospective owner-occupants. [Eff] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-96)

§16-119.5-4 Offers of sale of residential units. (a) At any time after issuance of an effective date for a developer's public report and after designating at least fifty per cent of the units for sale to prospective owner-occupants, the developer may offer for sale the non-designated owner-occupant units prior to or concurrently with offering to sell to prospective owner-occupants.

(b) A developer that uses either a chronological system or a lottery system may use, where applicable, the methods permitted by chapter 489E, HRS, Uniform Electronic Transactions Act, that are consistent with chapter 514B, HRS, and chapters 16-119.1 through

16-119.8 and as required by the commission.

(c) In computing any required time for offering the residential units to prospective owner-occupants, the first day of the publication is excluded and the last day is included unless the last day is a Sunday or holiday in which case the last day shall be the next day which is not a Sunday or holiday.

[Eff] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §§514B-95, 514B-95.5, 514B-96.5, 514B-98)

§16-119.5-5 Publication of announcement. "General circulation" as used in section 514B-95.5, HRS, includes a newspaper that is published daily and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest. A newspaper published in the county includes a newspaper that is published at least weekly and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest.

[Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-95.5)

16-119.5-6 Extenuating circumstances affecting an owner-occupant's compliance. (a) Any person who executes an owner-occupant affidavit pursuant to part V(B) of chapter 514B, HRS, may request that the commission:

(1) Issue an informal non-binding interpretation that an extenuating circumstance exists as specified in section 514B-98.5, HRS; and

(2) Issue a "no action" letter for any violation of this subpart based on the existence of an extenuating circumstance described in the request with the commission reserving its right to initiate future action should new information substantiate possible violation.

(b) The request shall be made on a form approved by the commission. A copy of an executed owner-occupant affidavit shall be attached to the request.

(c) The commission may consider the following in determining the existence of an extenuating circumstance as provided in section 514B-98.5, HRS:

(1) For a serious illness, a certified statement by the treating United States-licensed physician of the affiant or the person who was to have occupied the unit that the illness:
    (A) Arose after the date of the execution of the owner affidavit;
    (B) Was not previously known;
    (C) Is serious;
    (D) Is likely to exist for at least the remainder of the required owner-occupant period; and
    (E) Is of such a nature and scope the specifics of which prevent such person from occupying the unit.

(2) For an unforeseeable job or military transfer, a certification by the owner-occupant affiant of the following:
    (A) Date of first knowledge of transfer;
    (B) Date of transfer;
    (C) Address of new job location; and
    (D) Duration of transfer.

    An employer executed document supporting the certification shall be attached to the commission approved request form.

(3) For an unforeseeable change in marital status or change in parental status, a certification by the owner-occupant affiant of the following:
    (A) Date of marriage or date of separation or divorce (if applicable);
    (B) Date of birth of the newborn child (if applicable);
    (C) Date of change in legal custody of child or children and address on the date of taking custody or date custody

of child or children taken (if applicable);

(D) Date that the owner-occupant affiant and family moved into the owner-occupant unit (if applicable); and

(E) An explanation detailing specific reasons why the change in marital or parental status prevents the affiant from complying with the terms of the owner-occupant affidavit.

Third party, government, or court documents supporting the certification shall be attached to the commission approved request form.

(4) For any other unforeseeable change, a certification by the owner-occupant affiant of the following:

(A) Chronological statement of the unforeseeable occurrence;

(B) Specific reasons supporting how the unforeseeable occurrence affects compliance with the executed owner-occupant affidavit; and

(C) Date of first knowledge of the unforeseeable occurrence.

Supporting documents substantiating the date of first knowledge of the unforeseeable change by the owner-occupant shall be attached to the commission approved request form. The commission may require the owner-occupant to submit to the commission other additional information and documents in support of the extenuating circumstance request.

(d) Commission staff shall issue a "no action" letter on behalf of the commission where the existence of any of the extenuating circumstances of section 514B-98.5(b), HRS, is supported and is prima facie evidenced by the individual's request. All other requests for a "no action" letter shall be determined by the commission. [Eff] (Auth: HRS

§§436B-8(b), 514B-61, 514B-98.5) (Imp: HRS §514B-98.5)

§16-119.5-7 Sample copies of forms. Upon request by the commission, the developer shall provide a sample copy of the following forms:

(1) Affidavit of intent to become an owner-occupant of a residential unit; and

(2) Reservation agreement between the developer and an owner-occupant of a residential unit.

[Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-98)

§16-119.5-8 Failure to comply. (a) Should a developer fail to comply with the requirements of section 514B-95.5, HRS, or this section, the developer shall immediately cease any sales offering, unless otherwise approved by the commission, and:

(1) Refund all monetary deposits to persons on the reservation list;

(2) Cancel all executed affidavits;

(3) Cancel all executed sales contracts; and

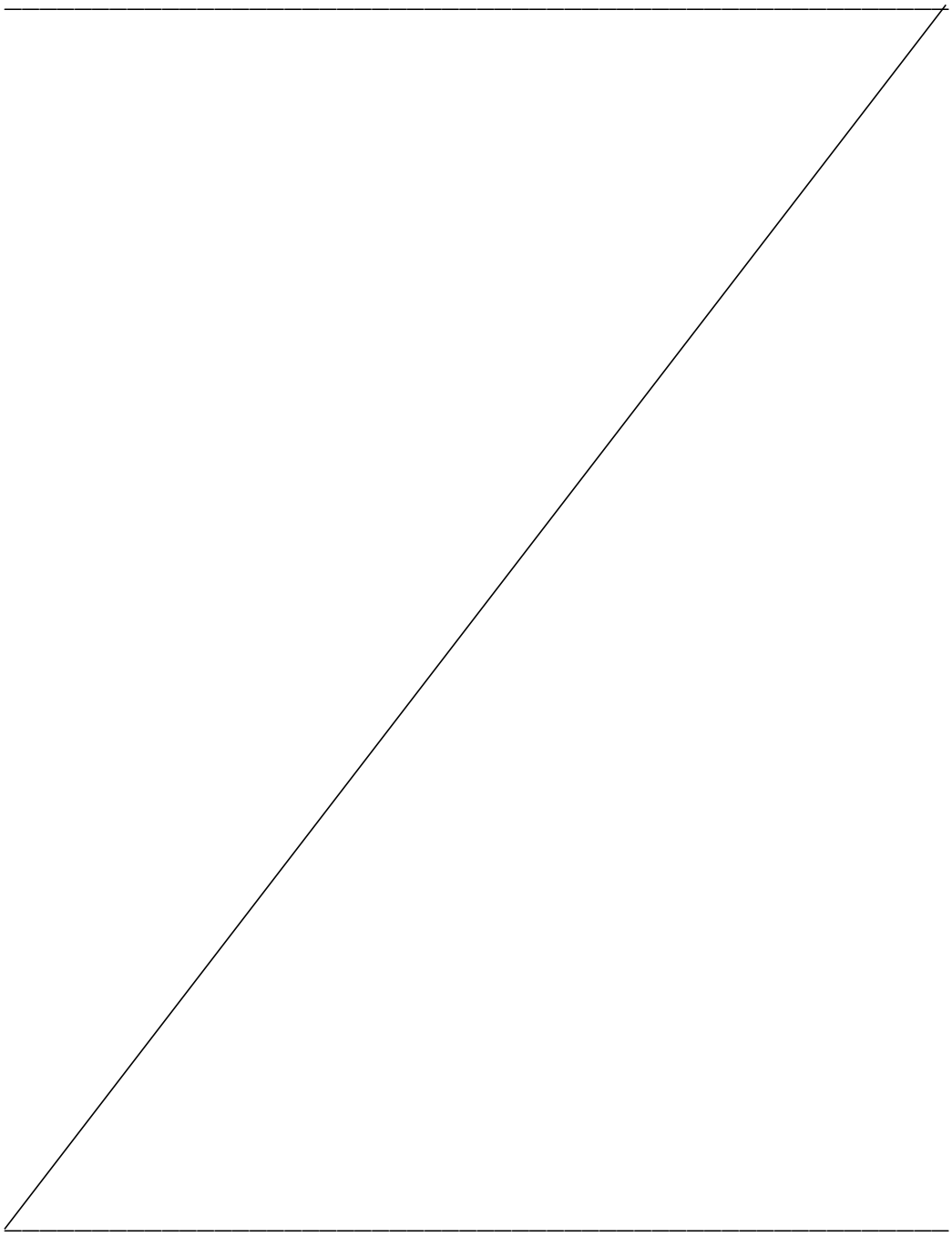
(4) Republish the owner-occupant announcement in accordance with section 514B-95.5, HRS.

(b) Subsection (a) applies to a developer exempt from but who elects to comply with and fails to comply with the provisions of part V(B) of chapter 514B, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-95.5)

§16-119.5-9 Owner-occupant affidavit. For purposes of part V(B) of chapter 514B, HRS, a non-owner-occupant may share title with an owner-occupant subject to the following conditions:

(1) The developer has received written confirmation that the owner-occupant's mortgage lender requires it; and
(2) During the first three hundred sixty-five days of ownership, should the non-owner-occupant decide to convey or transfer their interest, the transfer or conveyance shall only be made to the owner-occupant on title." [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-97)

7. Chapter 16-119.6, Hawaii Administrative Rules, entitled "Condominiums - Requirements for Replacement Reserves", is adopted.



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.6

CONDOMINIUMS - REQUIREMENTS FOR REPLACEMENT RESERVES

§16-119.6-1	Objective
§16-119.6-2	Applicability of chapter
§16-119.6-3	Definitions
§16-119.6-4	Effective date for establishing statutory replacement reserves
§16-119.6-5	Calculation of estimated replacement reserves; reserve study; good faith
§16-119.6-6	Fund accounting for each part of the association property; use of separate funds for other than stated purpose
§16-119.6-7	Emergencies and emergency situations
§16-119.6-8	Contingency reserves
§16-119.6-9	Conflict of chapter
§16-119.6-10	Reserve funds nontransferable
§16-119.6-11	Exempt association property; disclosure; transition to association property
§16-119.6-12	Borrowing and special assessments to fund replacement reserves
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§16-119.6-14	Distribution of budgets and reserve studies
§16-119.6-15	Enforcement

§16-119.6-1 Objective. This chapter implements the requirements of section 514B-148, HRS, that all condominium associations must follow budgets and establish statutory replacement reserves. These rules try to ensure that each unit owner in a project pays a fair share of the short-term and long-term costs of operating the project based upon the owner's period of ownership. The conduct of any reserve study and the selection of any reserve funding plan shall be consistent with the objectives of this section. The provisions of this chapter shall be read and interpreted consistent with these objectives. [Eff] Auth: HRS §514B-61) (Imp: HRS §514B-148)

§16-119.6-2 Applicability of chapter. (a) This chapter applies to all condominiums created within this State.

(b) Notwithstanding section 514B-101(b), HRS, which states that a project's declaration or bylaws may specifically provide that part VI of chapter 514B, HRS, not apply to nonresidential unit usage and projects not subject to any continuing development rights containing no more than five units, the developer at minimum shall include some provisions in the declaration providing for replacement reserves, funding, and the calculation of replacement reserves and funding. The included provisions may be different than what is required by this chapter and chapter 514B, HRS, or the provisions may be the same. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-23, 514B-101(b), 514B-148)

§16-119.6-3 Definitions. Unless the context indicates otherwise, the definitions in chapter 514B, HRS, apply to this chapter and the following definitions apply to chapter 514B, HRS, and this chapter:

"Asset" means any part of the association property.

"Association property" means those parts of a project which an association is obligated to maintain, repair, or replace, including but not limited to:

(1) All the common elements of the project, as determined from the project's declaration and the bylaws and any master deeds, restrictive covenants, apartment or unit deeds, apartment or unit leases, or other documents affecting the project;
(2) Any real property which is not part of the common elements but which the association either owns or leases for a term of more than one year, such as a manager's apartment acquired by the association after the project was developed;
(3) Any personal or movable property owned or leased by the association;
(4) Any fixtures owned or leased by the association;
(5) Any limited common element expense determined by the board pursuant to section 514B-41(c), HRS;
(6) Any components of association property; and
(7) Solar and wind energy devices as provided by and defined in section 514B-140, HRS, and other renewable energy devices.

"Association property" does not include any part of the project that is "exempt association property" or which fewer than all unit owners are obligated to maintain, such as units or certain limited common elements.

Example:
A project's documents state that a deck is a limited common element assigned to less than all the owners. The project's documents also state that the owners of the units to which the deck is appurtenant must pay for the cost of maintaining and repairing the deck. Therefore, the

association need not set aside funds for replacement reserves for the deck.

"Budget year" means the association's fiscal year for accounting and budgetary purposes.

"Cash flow plan" means the same as defined in section 514B-148, HRS, provided that where an association assesses unit owners to fund one hundred per cent of the estimated replacement reserves using a cash flow plan, the different reserve funding plans that are tested against the anticipated schedule of reserve expenses until a desired funding goal is achieved shall not result in:

(1) Disproportionate and unreasonable deferral of funding of the estimated replacement reserves to the last five years of the minimum twenty-year projection period;
(2) Each owner in a project not paying a fair share of the short-term and long-term costs of operating the project based on the unit owner's period of ownership; or
(3) Circumventing the requirements of section 514B-148(b), HRS, to collect the estimated replacement reserves amount for each part of the property for each year during the minimum twenty-year period to fund fully its replacement reserves requirements for each year during the minimum twenty-year period as determined by a reserve study.

"Component" means an individual line item in the reserve study developed or updated in the physical analysis part of the reserve study.

"Contingency reserves" means all reserve funds, other than replacement reserves, in an association's reserves accounts, including but not limited to reserves for:

(1) Unexpected contingencies or emergencies that in the reasonable judgment of the board may occur;
(2) The payment of insurance deductibles or other expenses relating to insurance;

(3) Legal expenses and lease renegotiation or fee purchase expenses;
(4) Legal or licensed professional services fees relating to the maintenance, repair, or replacement of association property;
(5) Additions and improvements to the association property, such as new construction;
(6) Late payment or nonpayment of an assessment by any unit owner; and
(7) Large infrastructure major repairs that have an estimated remaining life of more than twenty years. Examples include replacement of aging plumbing components and elevators. Notwithstanding the minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency, a board may elect to include in the reserve study the funding of large infrastructure major repairs that have an estimated remaining life of more than twenty years.

"Emergency" means the same as "emergency situation" as defined in section 514B-148(h), HRS. A situation requiring an association payment of an unforeseeable extraordinary amount for a utility expense due in part to a utility company's miscalculation of amounts due or any other similar unforeseeable situation shall be included in the definition of "emergency situation" as provided by section 514B-148(h)(2), HRS.

"Estimated age" or "effective age" means the estimated useful life of an asset minus its estimated remaining life.

"Estimated remaining life" means any period (1) which is shorter than the estimated useful life of an asset, and (2) for which the asset will continue to serve its intended function without requiring capital expenditures or major maintenance.

"Estimated replacement reserves", "reserve fund contribution", or "funding goal" means funds which an association's reserve study indicates must be assessed and collected during a budget year to establish a full replacement reserve for the association by the end of that budget year.

"Estimated useful life" means the period a new asset or an existing asset which has been newly restored or refurbished will serve its intended function without requiring capital expenditures or major maintenance.

"Exempt association property" means any asset which:

(1) At the end of its estimated useful life will require capital expenditures or major maintenance of less than $1,000 or less than 0.1 per cent of the association's annual operating budget, whichever is greater; or

(2) Has an estimated remaining life of more than twenty years.

Any asset which because of the passage of time ceases to be exempt shall become association property and be subject to the transitional rules stated in section 16-119.6-11.

"Full replacement reserve" means reserve funds for an asset equal to the projected capital expenditure or major maintenance required for the asset at the end of its estimated useful life multiplied by a fraction which has as its numerator and denominator the asset's estimated age and estimated useful life, respectively.

The total of the full replacement reserves for each asset shall be a full replacement reserve for the association.

Example:

A roof with an estimated useful life of ten years will cost $100,000 to replace. At the end of its seventh year of life, a full replacement reserve would be $100,000 x 7/10 = $70,000. In the tenth

year of its life, a full replacement reserve would be $100,000 x 10/10 = $100,000.

Under a cash flow calculation, one hundred per cent means total funding of all projected annual expenses for a minimum twenty-year period.

"Funds", "fund balance", or "reserve funds" mean cash or cash equivalents but excludes any funds that the association has borrowed. No borrowed funds shall be included when calculating whether an association has collected its statutory replacement reserves, including the funding of one hundred per cent of the estimated replacement reserves when using a cash flow plan, provided loans made in accordance with section 16-119.6-12 may be included in "funds", "fund balance", or "reserve funds" only for the first year of the life of the loan. Subsequent year loans shall not be included in "funds" or "reserve funds".

"Managing agent" means, for purposes of the good faith exemption provided by section 514B-148(d), HRS, any person carrying out the fiduciary duties as prescribed by section 514B-132(c), HRS, who prepares a replacement reserve study and who:

(1) Is a managing agent as defined by chapter 514B, HRS, and commission rules and policies relating to managing agents;
(2) Meets all legal requirements for managing agents; and
(3) Is the managing agent for the association for which the reserve study is prepared.

Any employee of a managing agent who prepares the replacement reserve study shall be deemed a managing agent for purposes of this definition.

"Minimum replacement reserve" means fifty per cent of a full replacement reserve or one hundred per cent of the full replacement reserve when using a cash flow plan.

"Reserve study" means a budget planning tool that consists of two parts, a physical analysis and a financial analysis, with both parts updated annually and that identifies the current status of the reserve

fund and a stable and equitable funding plan to fund the required "statutory replacement reserves".

"Statutory replacement reserves" means fifty per cent of an association's estimated replacement reserves or one hundred per cent of an association's estimated replacement reserves when using a cash flow plan.

"Substantially deplete" means any expense for an emergency which reduces the association's replacement reserves and contingency reserves by more than seventy-five per cent. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-41, 514B-101(b), 514B-148)

§16-119.6-4 Effective date for establishing statutory replacement reserves. (a) Each budget year, beginning with the fiscal year after a new association's first annual meeting, the board shall prepare and adopt an annual operating budget for the following budget year. Each annual operating budget shall include assessments sufficient to fund the association's statutory replacement reserves for the year to which the budget relates. Each budget year, beginning with the first budget year after a new association's first annual meeting, the association shall collect at least its statutory replacement reserves for that budget year.

(b) For those projects where the declaration has been recorded but the association has not held its first meeting as provided in section 514B-102, HRS, at least once each calendar year, commencing with the calendar year immediately following the date the first unit's conveyance was recorded, the developer shall, unless the developer owns one hundred per cent of the units in the project, notify in writing each unit owner of the way replacement reserves for future project maintenance and repairs will be addressed.

Such notice shall inform the unit owners in reasonable detail of at least the following:

(1) The purpose for establishing replacement reserves;
(2) A general summary of the replacement reserve requirements that would apply to associations under chapter 514B, HRS, and this chapter, on such form as the commission may provide;
(3) Whether any replacement reserve studies have been prepared for the project; and
(4) The amount of replacement reserves, if any, being collected as part of the unit owner's maintenance fees or otherwise being funded by the developer and the way those reserves were established. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-5 Calculation of estimated replacement reserves; reserve study; good faith. (a) The board shall calculate the association's estimated replacement reserves based on a reserve study developed in compliance with this chapter and chapter 514B, HRS, and as required by the commission.

(b) The board shall compile a list of the association's assets. If the project's declaration and association's bylaws fail to clearly state whether a part of a project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual unit owner, or individual unit owners. The board's resolution shall be based on chapter 514B, HRS, the project's declaration and the association's bylaws, as required by the commission, and any other applicable legal requirements or documents. The resolution shall clearly indicate whether the part in question:

(1) Is an asset of the association;
(2) Is the responsibility of an individual owner or individual owners, but fewer than all owners; or

(3) Is partly an asset of the association and partly the responsibility of fewer than all owners, such as plumbing or electrical systems.

The resolution shall state the basis of the board's decision and shall be effective to determine responsibility for replacement reserves for the part in question upon adoption and until changed by the board or by an amendment to the declaration or bylaws.

(c) The board shall determine the estimated useful life of each asset based on at least one of the following:

(1) The association's experience with the asset;

(2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated useful lives of items similar or comparable to the asset;

(3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier for the asset for any item similar or comparable to the asset or any materials or services for the asset's upkeep, repair, or replacement; or

(4) Any warranty provided by the supplier, installer, manufacturer, or builder of the asset or any services relating to its installation, upkeep, repair, or replacement.

(d) The board shall calculate the estimated capital expenditure or major maintenance required for each asset based on at least one of the following adjusted for inflation:

(1) The association's experience with expenses relating to the asset;

(2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated capital expenditure or major maintenance, required for the asset or items similar or comparable to the asset; or

(3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier of the asset of any item similar or comparable to the asset or any materials or services for the asset's installation, upkeep, repair, or replacement.

(e) Each year, the board shall adjust the amount of the estimated replacement reserves for an asset based on reasonable projections for inflation and interest which may be earned during the estimated useful life of the asset. Adjustments for inflation shall not assume an annual inflation rate less than that of the Honolulu Consumer Price Index for All Urban Consumers for the prior year or its five-year historical average. Adjustments for interest earned shall not exceed the prior year's average interest rate for seven-year United States treasury bills or its five-year historical average.

(f) If a board plans to assess less than one hundred per cent of the association's estimated replacement reserves for a budget year, the association's operating budget for that year, the reserve study, and the association's other records shall clearly and prominently indicate:

(1) The total amount the association's replacement reserve study indicates will be a full replacement reserve for the association at the end of the current budget year; and

(2) The total amount the association will have collected at the end of the current budget year.

(g) Any association, unit owner, director, officer, managing agent, or employee of an association who calculates the association's estimated replacement reserves as provided in subsections (b), (c), (d), and (e) shall be deemed to have acted in good faith if the calculations subsequently prove incorrect, provided that an association, board, director, officer, or managing agent act as fiduciaries as provided in section 414D-149, HRS, and also make the disclosures

required by subsection (f) to be deemed to have acted in good faith. For purposes of this section, "in good faith" also includes honesty in fact in the investigation, research, and preparation of the reserve study and calculations of the full and estimated replacement reserves. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-6 Fund accounting for each part of the association property; use of separate funds for other than stated purpose. (a) Unless the association is funding its reserves through a cash flow plan, an association shall establish at least one reserve account for its projected full replacement reserves. Within the full replacement reserve account, the association shall establish a separate designated fund or funds for each asset for which estimated capital expenditures or major maintenance will exceed $10,000. Projected full replacement reserves for all assets for which estimated capital expenditures or major maintenance will not exceed $10,000 may be aggregated into a single designated fund in the projected full replacement reserve account.

(b) For each of the separate designated funds, the association's records for the projected full replacement reserve account shall state:

(1) The purpose of each fund or the asset for which it is established; and

(2) An amount for the projected full replacement reserves allocated to each fund provided:

(A) An association need not comply with paragraph (1) for the single, aggregated fund. Instead, the projected full replacement reserve account records may state the purpose of the fund as "miscellaneous" or similar term and indicate the amount in the aggregated fund. The association shall list the assets for which the

aggregated fund is established elsewhere in its records; and

(B) An association using a cash flow plan shall collect for each budget year an appropriate reasonable annual percentage of assessments for reserves to ensure compliance as provided in the definition of "cash flow" in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and as required by the commission.

(C) An association using a cash flow plan shall comply with paragraphs (1) and (2) except:

(i) The amount of the estimated replacement reserves allocated to each fund may vary for each fiscal year from paragraph (1) and (2) to offset the variable annual expenditures from the reserve fund provided that the offset amount ensures that each unit owner in a project pays a fair share of the short-term and long term costs of operating the project based on the owner's period of ownership and provided that the board includes in the fiscal budget a line item indicating the allocated amount and percentage funded for each component identified by the physical analysis of the reserve study to fund the association's projected full replacement reserves; and

(ii) That an association record indicates how the funds are distributed, expended, and allocated.

(c) The board shall use replacement reserves allocated to a fund only for the stated purpose of that fund except:

(1) In an emergency or emergency situation, the board may use the replacement reserves in any fund for any legitimate association purpose provided the board passes a resolution containing written findings as to the necessity of using the replacement reserves for other than their designated purpose, the necessity of the expense involved, and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution is distributed to all members of the association; and

(2) The board may at any time use up to fifty per cent of the amount in any fund in the full replacement reserves for the stated purpose of any other fund. In such a case, the association records, including but not limited to board meeting minutes, and its annual budget shall indicate the change in use of the fund and the dollar amount of the fund used for another fund.

(d) If a board collects less than one hundred per cent of the association's estimated replacement reserves, the association's reserve account records shall clearly indicate how the board has allocated those reserves among each of the separate designated funds. Where an association has met its statutory replacement reserves, the board may fund each of the designated funds by an equal percentage, fund them by varying percentages, or fully fund some and not fund others. Regardless of the option chosen, the reserve account records shall accurately indicate the allocation and amount of funds allocated and adopted by the board and the expenditures made from those funds. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-7 Emergencies and emergency situations. (a) An association whose replacement reserves and contingency reserves have been substantially depleted by an emergency shall have three budget years to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan. The three years shall be calculated from the end of the budget year in which the association makes the payment which substantially depletes the association's replacement reserve.

(b) The board shall have the discretion to assess the unit owners in monthly, quarterly, or yearly installments to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan.

(c) In an emergency situation subject to section 514B-148(e), HRS, the board shall calculate the twenty per cent limit of that section based on the association's total annual operating budget for the budget year when the expense will occur. The board must notify the unit owners if an expense required because of an emergency will exceed the twenty per cent limit, but the board need not obtain unit owner approval for the expense.

(d) Section 514B-148(e), HRS, shall only limit a board's right to exceed its annual operating budget during the budget year to which the operating budget relates. That section shall not limit the board's right to increase an annual operating budget by more than twenty per cent over the annual operating budget of the previous year. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-8 Contingency reserves. Nothing in this chapter shall prohibit the establishment of a contingency reserve in compliance with this section. Unless the declaration or bylaws provide otherwise, the board may establish a contingency reserve in an

amount the board considers appropriate, based upon the age of the project, its maintenance history, plans for additions or improvements to the project, or any other factors the board deems relevant. The contingency reserve shall be subject to all the requirements relating to reserves except the requirements of sections 16-119.6-4, 16-119.6-5, 16-119.6-6(c) and (d), 16-119.6-7, and 16-119.6-9. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-9 Conflict of chapter. (a) Chapter 514B, HRS, and this chapter supersede any contrary provisions in a project's declaration, an association's bylaws, or any other applicable documents regarding preparation of budgets, calculation of reserve requirements, and assessment and funding of reserves. Except as stated in subsection (b), limits on spending or assessments shall not restrict the board's right to spend or assess for items required by the association's reserve study.

(b) Chapter 514B, HRS, and this chapter shall not supersede any contrary provisions in a project's declaration, an association's bylaws, or other applicable documents:

(1) Requiring the board to collect more than the association's statutory replacement reserves;

(2) Restricting a board's right to assess or spend to upgrade the common elements for such things as additions, alterations, or improvements; or

(3) Requiring a board to repair or maintain assets more frequently than the law, this chapter, or the association's replacement reserve study requires.

This chapter shall not supersede any related state or federal tax laws. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-10 Reserve funds nontransferable. Replacement reserve and contingency reserve funds that an association collects from unit owners become the property of the association. A unit owner who sells a unit shall have no right to reimbursement of the replacement reserve and contingency reserve funds from either the purchaser of a unit or the association. The replacement reserve and contingency reserve funds shall not be conveyed or transferred separately from the unit to which they relate. They shall be deemed conveyed or transferred with the unit, even though they are not specifically mentioned in any conveyance, assignment, or transfer of the unit.
[Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-11 Exempt association property; disclosure; transition to association property. (a) The association's reserve study shall disclose all assets for which funds are not included in the replacement reserve study because they are exempt association property. The reserve study shall also contain a brief explanation of why those assets are exempt association property.

(b) An asset which is deemed to be exempt association property because its estimated remaining life is more than twenty years shall become association property on the date its estimated remaining life becomes less than twenty years, referred to in this subsection as the transition date. The asset shall be included in the association's reserve study for the first budget year after the transition date. In calculating a full replacement reserve for the asset after the transition date, the association may disregard the asset's actual age. The association may instead assume that at the beginning of the first budget year after the transition date, the asset's estimated age is zero and its estimated useful life is the same as its estimated remaining life.

Example:
An existing asset has an estimated useful life of fifty years, becomes thirty years old on January 1, 2018, has an estimated remaining life of twenty years, and an estimated replacement cost of $100,000. Under the standard method of calculation, a full replacement reserve on December 31, 2018, for that asset would be $62,000 ($100,000 x 31/50). If an association had not already established a replacement reserve for that asset, the full replacement reserve contribution by December 31, 2018, would be $62,000 (or fifty per cent of that amount $31,000 for the minimum replacement reserve). If the association adopts the method of calculation permitted by subsection (b), the full replacement reserve contribution required by December 31, 2018, for the same asset would be only $5,000 ($100,000 x 1/20), or fifty per cent of that amount - $2,500 - for the minimum replacement reserve, although subsequent annual contributions will be higher than in the first example. In effect, the asset is deemed to be only one-year old, not thirty-one years old on December 31, 2018. [Eff] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

§16-119.6-12 Borrowing and special assessments to fund replacement reserves. Provided an association assesses and collects sufficient funds to fund its statutory replacement reserves, complies with the law, chapters 16-119.1 through 16-119.8, and commission requirements, the board may in order to pay the cost to maintain, repair, or replace assets of the association:

(1) Transfer funds between the separate, designated funds required by section 16-119.6-6, subject to the requirements of that section;
(2) Borrow funds, subject to the requirements of section 514B-105(e), HRS; and
(3) Specially assess the unit owners. This section shall apply if the board

underestimates the reserve requirements for an asset or if the cost to maintain, repair, or replace an asset will reduce the association's replacement reserve funds to less than fifty per cent of a full replacement reserve or to less than one hundred per cent of the full replacement reserves when using a cash flow plan during any budget year.

Example:
An association's full replacement reserve requirement is $500,000, but the association has only $250,000 of that amount in cash, as the law permits. The association's replacement reserve account designates $200,000 of the $250,000 to replace its roof in 2020 or to less than one hundred per cent of the replacement reserves when using a cash flow plan. In 2020, the association replaces its roof on schedule. If the association spends all the $200,000 designated in its replacement reserve account for the roof, large assessments will be necessary to re-establish fifty per cent of a full replacement reserve in cash by the end of 2020.

Replacing the roof will reduce the association's replacement reserve requirements during 2020 by $200,000, from $500,000 to $300,000 (to which must be added the funds required during 2020 for the other association assets). Nevertheless, spending the $200,000 will also reduce the association's replacement reserve funds by $200,000, from $250,000 to $50,000 (plus whatever the association collects during 2020).

Thus, by the end of 2020, the association will have only $50,000 in reserves, but needs at least $150,000 (i.e., fifty per cent of its full replacement reserve requirements of $300,000). Therefore, the association must collect at least

$100,000 by the end of 2020 to reach the minimum replacement reserve of $150,000 (plus whatever funds the reserve study indicates is necessary for other assets).

To reduce the hardship, the board can fund the expenses for the roof by borrowing or by special assessments. Even if the association has designated a specific fund in its replacement reserve account for the asset, the board may also transfer the money in that fund to other designated funds. Essentially, this section permits the board to use cash on hand, special assessments, borrowing, or any combination of the three to replace the roof and reduce the hardship on the unit owners. [Eff] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

§16-119.6-13 Leasing of association property. A board may lease rather than buy property to repair or replace any association property. Property which meets the definition of association property shall be deemed to be an asset of the association, and must be included in the association's reserve study, regardless of whether the association owns or leases the property. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

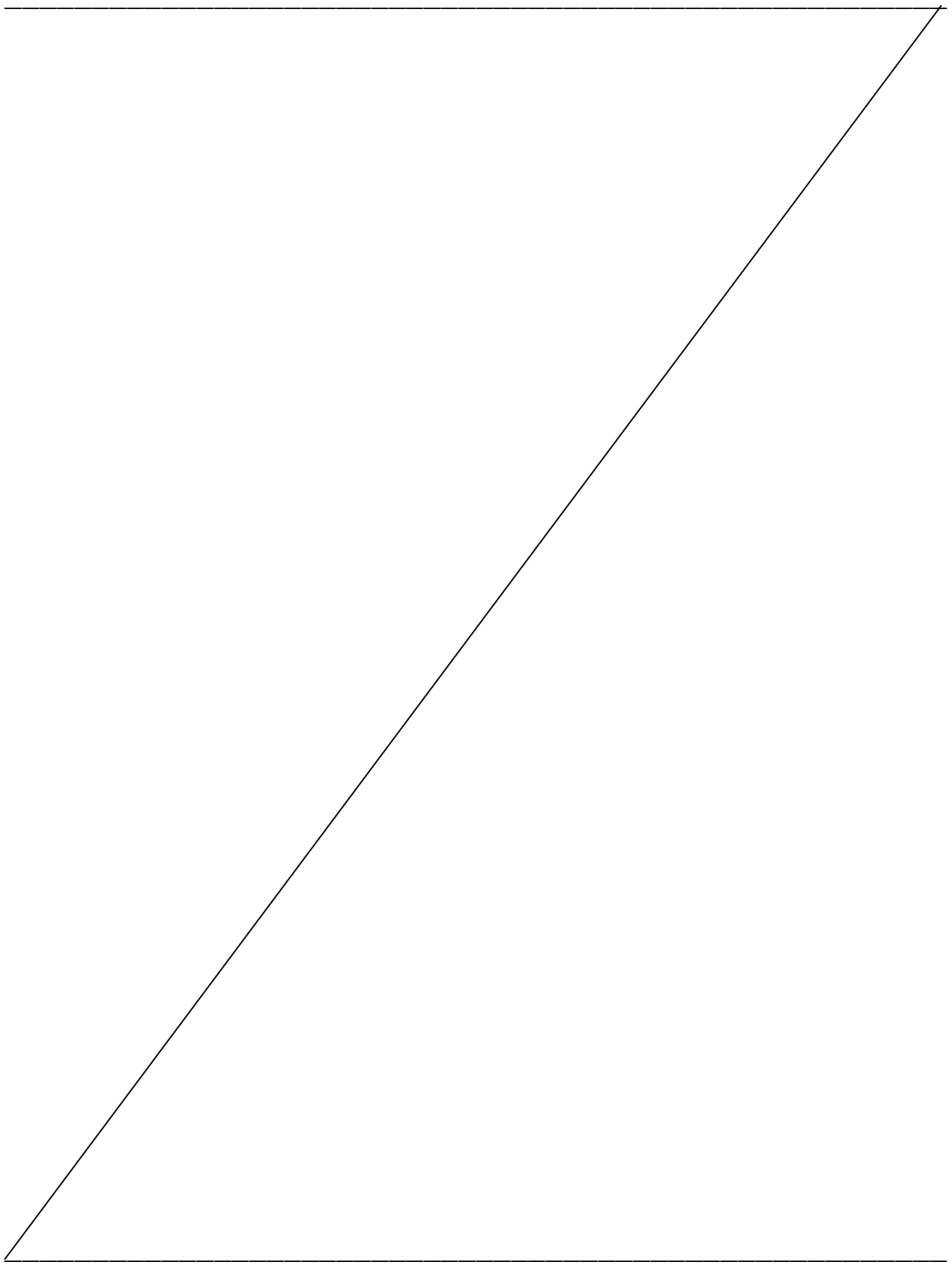
§16-119.6-14 Distribution of budgets and reserve studies. (a) A board shall distribute the annual operating budget required by section 514B-106(c), HRS, at least thirty days before the date of the association's annual meeting.

(b) The board shall attach to any approved budget that it makes available to any unit owner pursuant to section 514B-106(c), HRS, information about:

(1) Any updates made to its reserve study and descriptions of and explanation for the updates or a statement that no updates were made;
(2) A public accountant's findings about the adequacy of reserves or a statement that no findings were made; and
(3) Where a unit owner may examine the supporting completed reserve study or request a copy of same. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-15 Enforcement. If a board fails to prepare an annual operating budget or replacement reserve study in compliance with the requirements of section 514B-148, HRS, or this chapter, an association member may enforce those requirements. The association member may collect the costs of enforcement in compliance with the procedures provided in section 514B-157, HRS, including fees and costs incurred by the unit owner. If an arbitrator or judge determines that a board or board member has breached a fiduciary duty by intentionally ignoring the requirements of section 514B-148, HRS, or this chapter, the arbitrator or judge may award the unit owner fees and costs of enforcement against the board or board members, rather than against the association." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

8. Chapter 16-119.7, Hawaii Administrative Rules, entitled "Condominiums - Managing Agent", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.7

CONDOMINIUMS - MANAGING AGENT

§16-119.7-1 No registration required
§16-119.7-2 Managing agent; bookkeeper; accountant
§16-119.7-3 Conduct

§16-119.7-1 No registration required. The following persons who assist with the conduct of managing agent activity are excluded from the definition of managing agent:

(1) An employee of an association;
(2) An employee of a managing agent; or
(3) A person independently contracted by the association for landscaping, gardening, painting, cleaning, construction, maintenance, repair, security, bookkeeping, accounting, and similar work who does not handle or have access to the funds of the association. Access includes receiving or depositing association funds, issuance of checks, transfers, or debits payable from association funds, or signature authority on any association bank account.

[Eff] (Auth: HRS §§514B-61, 514B-132) (Imp: HRS §514B-3)

16-119.7-2 Managing agent; bookkeeper; accountant. (a) Unless otherwise specifically prohibited by law, the declaration, or bylaws, an association may contract with an independent bookkeeper or accountant to assist with maintaining the association's fiscal records provided the independent bookkeeper or accountant:

(1) Is not an employee of the association;
(2) Does not have access to association funds;
(3) Does not manage the operation of the project's property; and
(4) Is not within the definition of managing agent pursuant to sections 514B-3 and 514B-132(1)(B), HRS.

(b) An association contracting with a bookkeeper or accountant in the manner provided by this section shall initially and annually adopt a resolution stating that the board is aware, acknowledges, and accepts that the independent bookkeeper or accountant:

(1) Is not a currently registered managing agent pursuant to section 514B-132, HRS;
(2) Has or has no fidelity bond;
(3) Does not have access to association funds, including receipt or deposit of funds (including checks) or signature authority on association fund accounts; and
(4) Does not manage the operation of the project's property.

The resolution shall be executed by the association's board and attached to the association's biennial registration application. The association's registration will be considered incomplete if the resolution is not attached. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-132)

§16-119.7-3 Conduct. (a) A managing agent shall not accept any compensation, commission, rebate, or profit on any expenditure for an association that

it manages or from a unit owner without the association's knowledge and written consent.

(b) Where agreed upon in writing with an organized association, a managing agent shall complete the registration and reregistration of the association pursuant to section 514B-103, HRS.

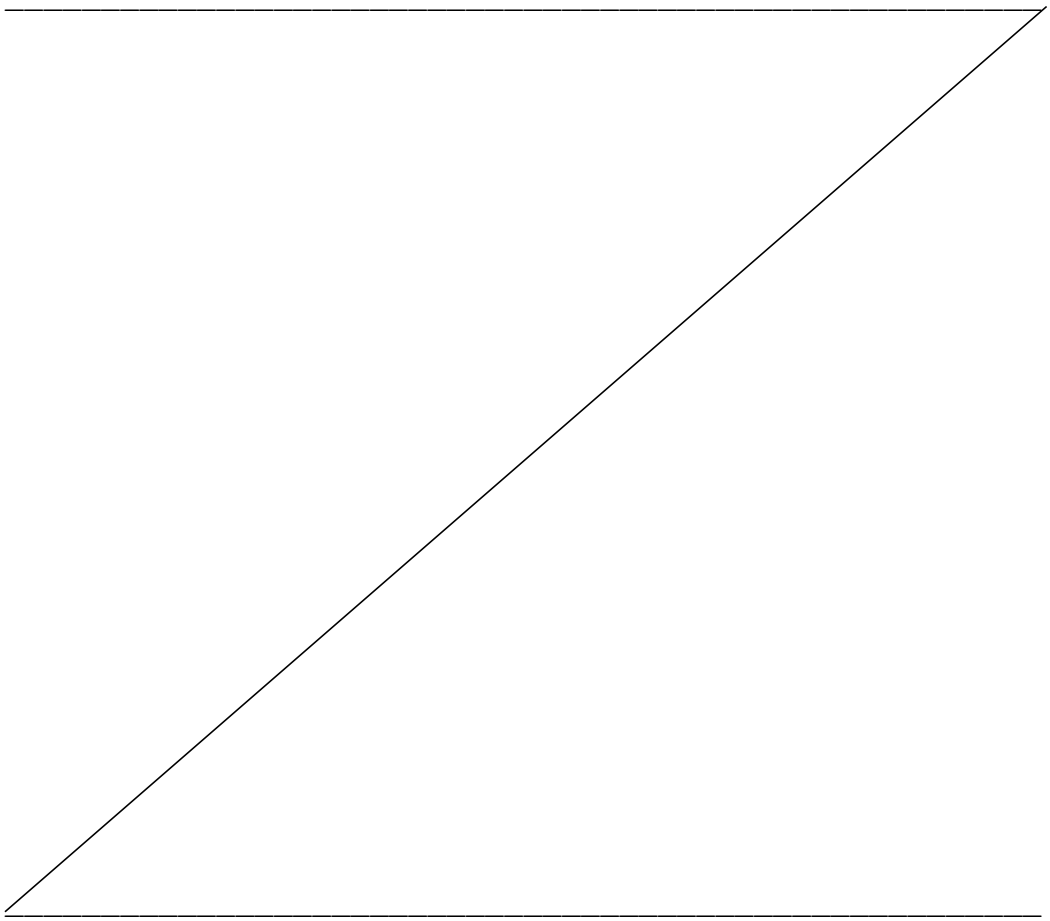
(c) In managing the operation of the property, the managing agent shall be responsible for full compliance by its employees and agents with the applicable provisions of chapters 467 and 514B, HRS, the rules adopted pursuant thereto, and commission requirements.

(d) As provided in section 514B-134(b), HRS, "services provided" include acknowledging receipt on behalf of the board any unit owner's complaint relating to the enforcement or alleged violation of the declaration, bylaws, or house rules, and the production of information, documents, and records in accordance with sections 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS. For these services, the written contract shall include agreements as to how, when, where, and to whom any unit owner's complaint or requests for information, documents, and records may be made, as well as where and to whom requests for mediation, arbitration, or appeal of a board decision may be directed. A written list and description of these services shall be updated annually and distributed to each unit owner. If an association is self-managed or has no managing agent, the board shall designate a member of the board to carry out the requirements of this subsection.

(e) Where a provision in chapter 467, HRS, conflicts with a provision of chapter 514B, HRS, regarding the conduct required of a managing agent, chapter 514B, HRS, controls. For example, section 467-1.6(b)(1), HRS, provides that the principal broker shall be responsible for the client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices. Section 514B-149(c)(2), HRS, provides that all funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the

managing agent or the managing agent's employees under the supervision of the association's board. In this example, section 514B-149(c)(2), HRS, controls, and the managing agent's employees may disburse funds from the client trust account established for the association under the supervision of the principal broker and supervision of the association's board." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§467-1.6(b)(1), 514B-149)

9. Chapter 16-119.8, Hawaii Administrative Rules, entitled "Condominiums - Association Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.8

CONDOMINIUMS - ASSOCIATION REGISTRATION

§16-119.8-1	Registration of an association
§16-119.8-2	Failure to provide evidence of fidelity bond
§16-119.8-3	Fidelity bond; deductible
§16-119.8-4	Fidelity bond exemption for an association
§16-119.8-5	Fidelity bond exemption
§16-119.8-6	Registration application
§16-119.8-7	Availability of association's records, documents, and information
§16-119.8-8	Deposit of association funds

§16-119.8-1 Registration of an association. (a) Notwithstanding that an association has minimal or no expenses for maintenance of the common elements, and except as provided in subsection (c), each project or association having more than five units shall register with the commission and obtain a fidelity bond as required by section 514B-103, HRS, and chapters 16-119.1 through 16-119.8.

(b) An association shall register with the commission in the name as it appears on the recorded declaration of the condominium property regime. Any name change shall be evidenced by an amendment to the

declaration made pursuant to section 514B-32(a)(11), HRS, and where the association has incorporated, a document evidencing that the entity is properly registered with the business registration division of the department.

(c) If so provided in a project's declaration and bylaws, this section shall not apply to:

(1) Condominiums in which all units are restricted to nonresidential uses; or

(2) Condominiums that contain no more than five units and are not subject to any continuing development right.

(d) The board, developer or developer's affiliate, or managing agent on behalf of the association shall be responsible for registering and reregistering the association pursuant to section 514B-103, HRS, including maintaining the required fidelity bond, provided that the board or developer or developer's affiliate may delegate in writing the completion of the registration and reregistration to a managing agent. [Eff] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §§514B-103, 514B-143)

§16-119.8-2 Failure to provide evidence of fidelity bond. Failure to provide evidence to the commission of continuous fidelity bond coverage throughout an entire biennial registration period prior to the expiration of the fidelity bond shall result in the automatic termination of the association registration. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-143)

§16-119.8-3 Fidelity bond; deductible. (a) The fidelity bond shall:

(1) Be issued by a company currently authorized by the State insurance division to issue insurance in this State;

(2) Name the department as the certificate holder;
(3) Provide coverage for association activity only;
(4) Name only the association as the insured and exclude any other person, trade name, or business entity as the named insured, except as permitted in subsection (e);
(5) Specify that it is a fidelity, employee dishonesty, or commercial crime bond and whether it is a blanket or name schedule type. If a name schedule type, list all persons handling or having control of funds received by the association, and provide notice to the commission of any changes to the name schedule on an amended name schedule within ten calendar days of the change;
(6) Not contain a criminal conviction endorsement or rider which requires as a condition precedent to recover the prosecution or conviction of the employee;
(7) State that it covers all officers, directors, employees, and managing agents of the association who handle, control, or have custody of association funds, and protect the association against fraudulent or dishonest acts by persons, including any managing agent, handling association funds;
(8) Specify an expiration date or that it is continuous;
(9) Specify whether the bond contains a deductible provision or a nondeductible provision; and
(10) Provide other information as requested by the commission.

(b) Unless otherwise approved by the commission, the insurance company's proof of insurance shall certify that the required fidelity bond:
(1) Is in effect and meets the requirements of sections 514B-103 and 514B-143(a)(3), HRS,

chapters 16-119.1 through 16-119.8, and commission requirements; and

(2) Includes other information as requested by the commission.

(c) The insurance certification shall be made on a form approved by the commission and submitted to the commission upon request.

(d) The board shall provide to each unit owner notice of the amount of the deductible, if any, and any changes in the fidelity bond coverage.

(e) An association may provide the required fidelity bond loss coverage by being named as an insured on another entity's insurance policy, provided that the policy includes a loss coverage provision for each covered registered association on a per occurrence basis that is not limited by an aggregate amount. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-103(a)(1), 514B-143)

§16-119.8-4 Fidelity bond exemption for an association. An association's fidelity bond exemption expires at the end of a registration period. Any reapplication for a fidelity bond exemption shall be made at least thirty days prior to the commission's deadline date for submission of a completed reregistration application. An application for an association's fidelity bond exemption shall be made on a commission approved form. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-143)

§16-119.8-5 Fidelity bond exemption. (a) An association that is unable to obtain a fidelity bond pursuant to section 514B-103(a)(1), HRS, may apply to the commission for approval of a fidelity bond exemption in accordance with that section and this section.

(b) All the units in the association or project shall be:

(1) Owned by a single individual or a single entity that is registered to do business in this State and in good standing with the State;

(2) Restricted by the declaration or bylaws to non-residential use; or

(3) Twenty or fewer units.

An association or project described in this subsection shall further satisfy all the following:

(A) Certify to the commission that it has letters from three separate insurance carriers that issue such bonds, each dated no more than a hundred and eighty days before the exemption application date, confirming that the association is unable to obtain a fidelity bond;

(B) Pass a resolution by its board certifying its inability to obtain a fidelity bond, intention to request an exemption from such requirement, and requiring that two persons sign all checks that exceed $2,500 drawn on association accounts;

(C) Is managed by a managing agent or a real estate broker who, except for a project described in paragraph (1), holds an active real estate license and is in good standing under the laws of the State;

(D) Prohibit any one individual or entity from having sole control over association funds and records without the supervision of at least one other association owner, director, or officer, except for a project described in paragraph (1);

(E) Keep separate operating and reserve accounts and books with two signatures required for any withdrawals from the reserve account; and

(F) Certify to the commission that the board promptly, diligently, and regularly reviews all association fund account statements.

(c) An association or project containing six or more, but fewer than fourteen units which has either reserves of $10,000 or less and an annual budget of $15,000 or less or an annual budget of $25,000 or less shall meet at least two of the following conditions:

(1) The requirements of subparagraph (b)(2)(C);
(2) The requirements of subparagraph (b)(2)(E);
(3) Has an operating account that requires two signatures for checks more than $500;
(4) Conducts an annual audit of association funds and accounts;
(5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;
(6) Conducts board review of the account statement from the project's managing agent or financial institution; or
(7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(d) An association or project containing more than thirteen, but twenty or fewer units which has reserves of $20,000 or less and an annual budget of $30,000 or less or has an annual budget of $50,000 or less shall meet at least three of the following conditions:

(1) The requirements of subparagraph (b)(2)(C);
(2) The requirements of subparagraph (b)(2)(E);
(3) Has an operating account that requires two signatures for checks more than $1,000;
(4) Conducts an annual audit of association funds and accounts;
(5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;

(6) Conducts board review of the account statement from the project's managing agent or financial institution; or

(7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(e) Any application for an exemption from the requirement to obtain a fidelity bond shall be submitted to the commission on a form prescribed by the commission, together with a nonrefundable application fee in an amount set forth in section 16-53-16.8. Any association that is granted an exemption shall immediately report to the commission in writing any changes that affect the project's eligibility for such exemption under this section.

(f) At registration or reregistration, the commission may approve a request for a fidelity bond exemption upon payment of a nonrefundable fee and the association's certification that it has complied with the commission's requirements for the specific exemption requested. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-143)

§16-119.8-6 Registration application. (a) A completed association registration and reregistration application includes, in addition to the requirements set forth in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and of the commission, an application signed by an authorized officer of the association, accompanied by payment of the correct fee amount and any applicable penalties, documentation of current evidence of a fidelity bond, and any other documents and information required by the commission.

(b) Upon a unit owner's request, the association board shall make available the file copy of the registration and reregistration application, if any, filed with the commission. The unit owner shall pay all reasonable fees for duplication, postage, and other administrative costs incurred by the board

relating to handling the request in accordance with section 514B-154(j), HRS.

(c) The commission may terminate a project or association registration when any changes to the association's registration information remain unreported to the commission for thirty days or more. Any termination shall subject the association to section 514B-103(b), HRS, including the loss of standing to maintain any action or proceeding in the courts of this State for the collection of any past due assessments for common expenses.

[Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-154(j))

§16-119.8-7 Availability of association's records, documents, and information. (a) Biennially, each project or association with more than five units shall attach a copy of the following to its association registration and reregistration application:

(1) A one to two-page written summary of where, when, and how the records, information, and documents required by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, shall be made available to unit owners and of any costs subject to sections 514B-105(d)and 514B-154(j), HRS, of making the records, information, and documents available; and

(2) The date the written summary required by paragraph (1) was last distributed to unit owners.

(b) The summary required by subsection (a) shall include the information required by subsection (a) and the following:

(1) The name and address of a person or entity to whom a unit owner may direct a request for the records, information, and documents. A unit owner may use any type of writing to

make the request, including an association approved form;

(2) The number of days no later than thirty days as specified by section 514B-154.4(c), HRS, after receipt of a request within which the board, managing agent, if any, or the association's representative shall make the requested records, information, and documents available for examination or copying;

(3) The specific location and time where the requested records, information, and documents shall be made available for examination or copying. Where not specifically provided by chapter 514B, HRS, the designated location shall be convenient for both the unit owner and the association. The requested records, information, and documents may also be made available electronically as provided by chapter 489E, HRS;

(4) The cost, subject to section 514B-105(d), HRS, if any, including the costs prescribed by sections 514B-153, 514B-154, and 514B-154.5, HRS, or costs allowed by law; and

(5) Any other records, information, and documents as the commission may request to be provided on the association's registration application.

(c) Unless making the records, information, and documents of subsections (a) and (b) available to unit owners is prohibited or limited by a state or federal law, a board or managing agent shall:

(1) Make every good faith effort to provide the requested records, information, and documents;

(2) Redact any information the disclosure of which would clearly be an unwarranted invasion of privacy or violates any other state or federal law or regulation;

(3) Where not an unwarranted invasion of privacy or prohibited by any state or federal law or

rule, make the remaining records, information, and documents available to the unit owner in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8; and

(4) Cite the specific authority for any non-disclosure; for example, the specific state or federal law or regulation or provision of the declaration or bylaws for any refusal to disclose.

(d) The commission may prescribe a form for submitting the information required by subsections (a) and (b).

(e) A management contract made pursuant to section 514B-134(b), HRS, shall include provisions describing:

(1) A managing agent's duties and responsibilities relating to making available records, information, and documents as provided in sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8. Where there is no managing agent contracted and authorized to make available the records, information, and documents in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, the board shall designate a person or entity to undertake such duties and responsibilities;

(2) Where the managing agent has contracted with the association for such services, procedures for receiving on behalf of the association any unit owner's complaint regarding the availability of records, information, and documents and information regarding alternative dispute resolution; and

(3) Any other provision required by section 514B-134, HRS, or the commission.

(f) A managing agent, board, board member, or association representative that fails to make records, information, and documents available for examination or copying as provided by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, is subject to the criminal and civil penalties of section 514B-69, HRS, and the commission's investigatory, cease and desist, and injunctive powers as provided in sections 514B-65, 514B-66, and 514B-68, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-106(c), 514B-122, 514B-134, 514B-144(a), 514B-148, 514B-150, 514B-152, 514B-153, 514B-154, 514B-154.5)

§16-119.8-8 Deposit of association funds. As used in section 514B-149, HRS, the term "located in the State" shall mean that the financial institution:

(1) Is currently registered with the department's business registration and financial institution divisions, in good standing, and authorized to do business in this State; and

(2) Has an office in this State that is managed and operated by employees who are physically located at the office site." [Eff] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §514B-149)

10. The repeal of chapter 16-107 and the adoption of chapters 16-119.1, 16-119.2, 16-119.3, 16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8, 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 M DD, YYYY, and filed with the Office of the Lieutenant Governor.

_____
NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

_____
Deputy Attorney General

IV. New Business

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 84, Massage Therapy, promulgated by DCCA

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

Date: 5/17/2024

Department or Agency: Commerce and Consumer Affairs, Professional and Vocational Lic

Administrative Rule Title and Chapter: Title 16 Chapter 84, Hawaii Administrative Rules

Chapter Name: Massage Therapy

Contact Person/Title: Risé Doi, Executive Officer

E-mail: rdoi@dcca.hawaii.gov Phone: (808) 587-8854

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

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

☐ Yes ☑ No

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

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

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

☑ Yes ☐ No

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

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

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

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

☑ Yes ☐ No

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

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

☐ Yes ☑ No

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

* * *

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

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

   Massage therapy establishments will be required to adhere to sanitary standards. Massage therapists will be required to complete 12 hours of continuing education upon renewal of their license every two years.

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.

   N/A

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

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

      N/A

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

      N/A

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

      N/A

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

      N/A

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

   N/A

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.

   The Board will allow massage therapists to complete online CE courses to reduce the cost of travel for massage therapists to complete in-person CE courses.

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

   Before the statute was changed, there was no CE requirement for massage therapists. Other health related professions require CE. Requiring 12 hours of CE will elevate the massage therapists' profession and will protect the public.

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

   See #5

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

   The proposed rules were discussed in open board meetings for which public notice was given.

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

      N/A

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.
   Dept. of Health repealed sanitation rules for massage establishments in 2018.

   There was previously no CE requirement for massage therapists, a health-related profession. Other states require more than Hawaii's 12 hours of CE.

   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.
      The rules will require massage establishments to adhere to sanitary standards. Requiring CE for massage therapists will ensure that licensees maintain knowledge of their profession.

   b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
      See Hawaii Revised Statutes 452-16 and 452-18

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

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

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

* * *

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HOʻOKELE

AHLANI K. QUIOGUE
LICENSING ADMINISTRATOR

BOARD OF MASSAGE THERAPY

STATE OF HAWAII | **KA MOKUʻĀINA ʻO HAWAIʻI**
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA ʻOIHANA PILI KĀLEPA
P.O. BOX 3469
HONOLULU, HAWAII 96801
cca.hawaii.gov/pvl

May 22, 2024

Chair Mary Albitz
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

SENT VIA EMAIL: jetaime.k.ariola@hawaii.gov

RE: Small Business Impact Review of the Proposed Amendments to **Title 16, Chapter 84, Administrative Rules of the Board of Massage Therapy**

Dear Chair Albitz,

Attached for your review is the draft of amendments being proposed to Title 16, Chapter 84 Hawaii Administrative Rules. We are seeking approval from the Small Business Regulatory Review Board to hold a public hearing on these amendments.

The Board approved the proposed rules at its March 16, 2022, meeting.

These amendments have been submitted and reviewed by the Office of the Attorney General as to substance.

The proposed amendments implement Act 64, SLH 2020 ("Act 64"), and Act 102, SLH 2021 ("Act 102"). An outline of the proposed changes is as follows:

Subchapter 1 General provisions. Act 102 requires that beginning with the renewal commencing on the July 1, 2024 and every licensing biennium thereafter, each massage therapist licensee shall submit proof of having completed twelve hours of continuing education within the two-year period preceding the renewal date, of which two of those hours shall include first aid, cardiopulmonary resuscitation, or other emergency-related course.

Subchapter 4.1 Sanitation. Act 64 requires the Board to adopt administrative rules that establish standards of sanitary practices for massage therapy establishments. A new subchapter is being added to implement Act 64 by establishing sanitary practices for massage therapy establishments.

Subchapter 13 Continuing education. Act 102 requires the Board to adopt administrative rules relating to the requirements and standards that continuing education shall meet to obtain recognition and approval from the board. A new subchapter is being added to implement Act 102 by establishing the requirements and standards that continuing education courses must meet for massage therapists to complete for licensure renewal.

Additionally, other revisions were made, including the following:

Subchapter 1 General provisions. HAR §16-84-2 was revised to expand the definition of the word "person" to include a limited liability company and business entity.

Subchapter 6 Apprentices. HAR §16-84-23(n) and (o) were revised to clarify that the adult and infant cardiopulmonary resuscitation course cannot be completely online and to remain consistent with the continuing education requirements in Subchapter 13.

Subchapter 12 Massage students. HAR §16-84-48(a) was revised to align the cardiopulmonary resuscitation training requirements for massage students with massage apprentices.

"Out-call massage service" was removed throughout the chapter as there is no application for out-call massage. Licensed massage therapists are allowed provide out-call services. Out-call massage service is when a licensed massage therapist goes to the location of the client to provide massage therapy services.

Other non-substantive amendments were also included for clarity and style.

After your review, the proposed amendments will be submitted to the Governor for approval to proceed with a public hearing.

If you have any questions, please contact me at (808) 587-8854 or by email at rdoi@dcca.hawaii.gov.

Thank you for your consideration in this matter.

Very truly yours,

Risé Doi

Risé Doi
Executive Officer
Board of Massage Therapy

RECEIVED
By SBRRB at 8:34 am, May 23, 2024

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-84
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-84, Hawaii Administrative Rules, entitled, Massage Therapy, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 84

MASSAGE THERAPY

Subchapter 1 General Provisions

§16-84-1 Objective
§16-84-2 Definitions
§16-84-3 Renewal, restoration, reactivation of massage therapist license; continuing education; audit; forfeiture

Subchapter 2 Applications

§16-84-6 License application for massage establishment
§16-84-7 Application for examination or license, or both
§16-84-8 Apprenticeship application

Subchapter 3 Principal Massage Therapist

§16-84-11 Requirements for principal massage therapist

Subchapter 4 Establishment Conditions

§16-84-15 Massage establishment requirements

Subchapter 4.1 Sanitation

§16-84-16 Sanitary practices
§16-84-17 Infectious and contagious diseases

Subchapter 5 Revocation

§16-84-19 Suspension and revocation of licenses

Subchapter 6 Apprentices

§16-84-23 Requirements for apprentices

Subchapter 7 Examination

§16-84-27 Examination requirements

Subchapter 8 Repealed

§16-84-31 Repealed

Subchapter 9 Practice and Procedure

§16-84-35 Administrative practice and procedure

Subchapter 10 Oral Testimony

§16-84-39 Oral testimony

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-84-1 Objective. This chapter is intended to clarify and implement chapter 452, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 3/28/66; am 4/4/70; am and ren §16-84-1, 6/22/81; am and comp 4/9/82; comp

7/19/87; comp 3/26/90; comp] (Auth: HRS §452-6) (Imp: HRS §452-6)

§16-84-2 Definitions. As used in this chapter:

"Apprentice" means a person who has been issued a permit by the board to learn the practice of massage under the direct supervision of a sponsoring massage therapist[~~:~~].

"Board" means the state board of massage;

"Continuing education" means a course or courses that expand knowledge and education in the practice of massage therapy[~~:~~].

"Direct supervision" means the control, direction, and instruction of an apprentice by the sponsoring massage therapist who shall be on the premises of the establishment when the apprentice is in training and available to the apprentice during the apprentice training period[~~:~~].

"Establishment" means a massage establishment[~~:~~].

"Massage therapist" means a person licensed to practice massage[;

~~"Out-call massage service" means any business, which is to engage in or carry on the practice of massage, not at a fixed location but at a location designated by the customer, client, or service;~~].

"Person" means an individual, partnership, [~~or~~] corporation[~~:~~] , limited liability company, or business entity.

"Principal massage therapist" means a massage therapist designated by an establishment [~~and an out-call massage service~~] as the person in charge[~~:~~].

"Sponsoring massage therapist" means a massage therapist licensed in this state for at least three years, employed by or registered with a licensed massage establishment, and registered with the board as being the person responsible for the direct supervision of an apprentice. [Eff 3/28/66; am and ren §16-84-2, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; am and comp 3/26/90; am and

comp] (Auth: HRS §452-6) (Imp: HRS §452-1)

§16-84-3 Renewal, restoration, reactivation of massage therapist license; continuing education; audit; forfeiture. (a) A massage therapist license shall expire on June 30 of every even-numbered year and shall be renewed biennially. The massage therapist shall be responsible for the timely renewal of the license by submitting a complete application and application fee prior to the expiration date of the license.

(b) Beginning with the renewal for the licensing biennium commencing on July 1, 2024, and every biennial renewal thereafter, each massage therapist shall be required to complete twelve hours of continuing education within the two-year period preceding the renewal date, of which two hours shall include first aid, cardiopulmonary resuscitation, or other emergency-related course.

(c) Upon application for license renewal, restoration, reactivation or reinstatement, each licensee shall have complied with and attest to completion of the continuing education requirement recognized by the board pursuant to subsection (a), during the two years preceding the application for license renewal, restoration, reactivation or reinstatement and shall be prepared to submit evidence of completion if requested by the board.

(d) The board may conduct a random audit to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to all licensees selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with continuing education requirement.

(e) A massage therapist who renews on inactive status is not required to complete the continuing education requirement until the massage therapist licensee applies for reactivation and provides proof

that the individual has met the requirements of subsection (b).

(f) A massage therapist license that is not renewed on-time shall be forfeited. A massage therapist license may be restored within one year from the expiration date of the license by submitting a complete restoration application, fees, including a late fee and proof of completion of the continuing education requirement. A completed renewal application sent by United States mail shall be considered timely filed if the envelope bears a postmark on or before the required renewal date. If the massage therapist license is not restored within one year from the expiration date, the massage therapist shall apply as a new applicant and shall meet all current license requirements, including but not limited to take and pass the licensure examination and satisfy all requirements for the examination, including training, if the board is not satisfied that the person possesses current knowledge and skills for the practice of massage therapy. If requesting an exam waiver after forfeiture of the license, the applicant shall provide proof of licensure in another jurisdiction or continuing education courses completed since the expiration of the license. [Eff and comp] (Auth: HRS §452-6) (Imp: HRS §452-16)

SUBCHAPTER 2

APPLICATIONS

§16-84-6 License application for massage establishment [~~and out-call massage service~~]. [~~(a)~~] Any person seeking a license for a massage establishment [~~or out-call massage service~~] shall

submit an application on a form or forms prescribed by the board and shall submit names and addresses for:

(1) The establishment[~~ or out-call massage service~~];

(2) The principal massage therapist; and

(3) All persons connected with the establishment [~~or out-call massage service~~] in the capacity of proprietor, partner, or in the case of a corporation, officers and directors.

[~~(b) Applicant shall obtain sanitation clearance from the department of health and submit evidence of clearance to the board.~~] [Eff 3/28/66; am and ren §16-84-6, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; am and comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §452-13)

§16-84-7 Application for examination or license, or both. (a) Any person applying for examination or license to practice massage shall apply on forms prescribed by the board.

(b) The proper fee shall accompany the application.

(c) An applicant shall complete either the apprenticeship program as outlined in section 16-84-23 or the course of study as a massage student outlined in section 16-84-48 before the application for examination is filed. [Eff 7/19/87; am and comp 3/26/90; comp] (Auth: HRS §452-6) (Imp: HRS §§452-12, 452-13, 452-14, 452-15)

§16-84-8 Apprenticeship application. Any person seeking registration to practice as a massage apprentice must apply on a form or forms prescribed by the board, and shall submit a letter of agreement from the sponsoring massage therapist indicating the starting date of the practical phase of the

apprenticeship program and the number of hours per week the applicant will be directly supervised by the sponsoring massage therapist and training program to be subject to board's approval. [Eff and comp 4/9/82; am and comp 7/19/87; comp 3/26/90; comp] (Auth: HRS §452-6) (Imp: HRS §§452-6, 452-13)

SUBCHAPTER 3

PRINCIPAL MASSAGE THERAPIST

§16-84-11 Requirements for principal massage therapist. (a) The principal massage therapist shall be responsible for maintaining a file at the office of the board, containing the name and address of the massage establishment, [~~any out-call massage service,~~] the names, nicknames, license numbers, and current residence addresses of all massage therapists employed by the massage establishment [~~and out-call massage service~~]. The principal massage therapist shall notify the board in writing of all changes in addresses and in personnel (massage therapists and apprentices) within forty-eight hours of the change. Upon acceptance of an apprentice, the principal massage therapist shall fill in the space allotted for the action on the back of the apprentice's permit. The principal massage therapist shall notify the board of any action within the required time.

(b) The principal massage therapist shall be responsible for the conduct of all massage therapists, apprentices, and any other persons affiliated or connected with the massage establishment while those persons are within the premises of the massage establishment.

(c) To qualify as a principal massage therapist, a person must be licensed.

(d) The principal massage therapist shall be responsible for all lascivious conduct, lewdness, or any sexual act conducted by any person in the massage establishment.

(e) The principal massage therapist shall ensure that every apprentice wears a conspicuously placed name tag stating the name, and the word "apprentice." The word "apprentice" shall have letters at least one-third inch high.

(f) The principal massage therapist, at the end of the apprentice's training program or termination of sponsor's letter of agreement, shall ensure that the sponsoring massage therapist completes a written report for the apprentice. The report shall contain the number of hours of training and indicate specifically what type of practical massage techniques were taught to the apprentice under the supervision of the sponsoring massage therapist.

(g) The principal massage therapist shall notify all customers when they are to be massaged by an apprentice. [Eff 3/28/66; am and ren §16-84-11, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §452-6)

SUBCHAPTER 4

ESTABLISHMENT [~~AND OUT-CALL MASSAGE SERVICE~~] CONDITIONS

§16-84-15 Massage establishment [~~and out-call massage service~~] requirements. (a) No massage establishment [~~or out-call massage service~~] shall be licensed or allowed to operate unless the massage business thereof is under the direct management of a massage therapist designated as the principal massage

therapist and the name of the person has been recorded with the board's office.

(b) An establishment [~~or out-call massage service~~] shall notify the board within five days after the disassociation of its principal massage therapist. The establishment [~~and out-call massage service~~] shall have ten days from the date of disassociation of the principal massage therapist in which to designate another massage therapist as principal massage therapist. If after fifteen days from the date of the disassociation of its principal massage therapist the establishment [~~or out-call massage service~~] has not designated another principal massage therapist, the license of the establishment [~~or out-call massage service~~] shall be automatically suspended. Suspension shall remain in effect until such time as a massage therapist is designated principal massage therapist and the person's name is recorded at the board's office.

(c) Every establishment shall display, in a conspicuous place, its license, together with the licenses and permits of all persons employed by the establishment with the current validation of the certificates of the massage therapists and apprentices.

(d) No establishment shall operate without a licensed massage therapist in attendance on the premises of the establishment at all times. During the absence of the principal massage therapist, a massage therapist must be designated to act in that capacity. That designated person, with the principal massage therapist, shall be responsible for the operation and activities of the establishment during the absence of the principal massage therapist.

(e) An establishment [~~or out-call massage service~~] may be charged either separately or with its principal massage therapist with any violation of the law or rules of the board.

(f) No establishment [~~or out-call massage service~~] shall employ, allow, or permit any unlicensed person to practice massage or assist in the practice

of massage on its premises, except if the person has an apprentice permit.

(g) Every massage establishment [~~or out-call massage service~~] shall be responsible for all lascivious conduct, lewdness, or any sexual act on its premises.

(h) The maximum ratio of apprentices to each massage therapist in any establishment shall be ten to one.

(i) Every establishment shall assure proper supervision and training of the apprentice. The establishment shall notify all customers when they are to be massaged by an apprentice. If upon notice the customer does not want a massage by an apprentice, the establishment shall furnish a massage therapist or refund any money paid in advance by the customer for the massage. Apprentices shall not be sent on hotel or house calls.

(j) All establishments may be inspected at any time during business hours by any member of the department of health or the board or their authorized agents. Appropriate identification shall be presented by the investigators on request.

(k) Rest quarters provided for employees shall not be used for massage purposes and shall be properly identified by a sign over the doorway.

(l) No establishment shall install or permit the use of any locks on the doors of massage rooms. Any device used to secure a door against easy entry or exit shall be considered a lock.

(m) An establishment [~~or an out-call massage service~~] license is nontransferable. Application for a new license must be made within ten days after the death of the owner or upon sale or transfer of the establishment [~~and the out-call massage service~~].

(n) When relocating an establishment, all requirements shall be fulfilled except for the license fee.

~~[(o) When relocating an out-call massage service, all requirements shall be fulfilled except for the license fee and sanitation clearance form.~~] [Eff 3/28/66; am 4/4/70; am and ren §16-84-15, 6/22/81; am

and comp 4/9/82; am and comp 7/19/87; am and comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §§452-3, 452-6, 452-13, 452-15, 452-19)

SUBCHAPTER 4.1

SANITATION

§16-84-16 Sanitary practices. (a) All massage establishments may be inspected at any time during business hours by any member of the board or their authorized agents and are subject to the following requirements:

(1) Toilet facilities shall be provided within two hundred feet of any massage therapy establishment;

(2) Cleaned and sanitized linens and instruments shall be used for all clients then sanitized again prior to use on another client; and

(3) The massage therapy establishment shall be kept clean and in good repair, properly lighted, and ventilated.

(b) A permanent fixed location shall be subject to the following requirements:

(1) If the massage therapy establishment is located within a residence, any massage services must be provided in a space designated for massage only and must be separated from any other portion of the residence by solid permanent partitions and a solid door and shall have a handwashing station facility with running water conveniently located; and

(2) In all newly constructed or existing non-residential locations that have been structurally renovated or requiring a

building permit, hand washing facilities with running water, hand cleansing soap, and single use towels or other hand drying devices shall be located in the operation area.

(c) An off-site location shall be subject to the following requirements:

(1) The therapeutic area and any equipment must be clean, in good repair, sanitized, and properly stored in a covered and enclosed vessel; and

(2) A hand basin with running water or sanitary hand cleanser and single use towels must be provided in the operating area.

(d) All massage establishments shall have and maintain a current written policy, guideline, or procedure that is made available to all employees and staff for complying with the sanitary practices required by this section. Moreover, upon demand, any massage establishment must disclose a copy of the current written policy, guideline, or procedure for inspection by the board or their authorized agents. [Eff and comp] (Auth: HRS §452-6) (Imp: HRS §452-18)

§16-84-17 Infectious and contagious diseases. Massage therapists shall be subject to the following requirements:

(1) Massage therapists with a contagious disease in a communicable form shall not attend to any client;

(2) Massage therapists shall maintain a high degree of personal hygiene and cleanliness; and

(3) Massage therapists shall wash and clean their hands before and after attending to each client. [Eff and comp] (Auth: HRS §452-6) (Imp: HRS §452-18)

SUBCHAPTER 5

REVOCATION

§16-84-19 Suspension and revocation of licenses. Any establishment [~~or an out-call massage service~~] license, a principal massage therapist registration, a massage therapist license, or an apprentice permit may be suspended or revoked upon any one of the following grounds:

(1) Falsification or misrepresentation in the application for a license, registration, or permit;

(2) Practicing massage under a false name or name other than that on the license or apprentice permit;

(3) Use of untrue, fraudulent, misleading, or deceptive advertising, or of any form or manner of advertising which may directly or indirectly suggest sexual or immoral acts;

(4) Abandoning an establishment [~~or an out-call massage service~~] without prior notice to the board;

(5) Violation of any law or rule concerning or affecting the practice of massage, including any provision of chapter 452, HRS, or this chapter;

(6) Prescribing, administering, or making recommendations as to medication or injection therapy;

(7) Stating or implying through any newspaper, magazine, directory, pamphlet, poster, card, circular, or other writing or publication or by any advertisement, that the registrant, has cured, can cure, or guarantees to cure, or has successfully treated any disease, defect, or deformity;

(8) Participating in or using the establishment for any lascivious conduct, lewdness, or any sexual act;

(9) Teaching the practical application of body massage without the proper qualification as outlined in this chapter; [~~and~~]

(10) Causing bodily injury by carelessness or negligence as a result of practicing massage [~~.~~]; or

(11) Submitting to or filing with the board any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact, including a false attestation of compliance with continuing education requirement. [Eff 3/28/66; am 4/4/70; am and ren §16-84-19, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §§452-6)

SUBCHAPTER 6

APPRENTICES

§16-84-23 Requirements for apprentices. (a) The apprenticeship program shall consist of not less than five hundred seventy hours and the applicant shall successfully complete a cardiopulmonary resuscitation training program. The first one hundred fifty hours shall be academic and shall not have a time period and shall be completed before the practical training. The course of study shall be as listed in subsection (i)(1) and (2).

(b) The applicant shall submit an application for apprenticeship training to the board with the

certificates of completion of all required courses as listed in subsection (i)(1) and (2).

(c) A letter of agreement from the sponsoring massage therapist as outlined in section 16-84-8 shall be attached to the application.

(d) The remaining four hundred twenty hours shall constitute the beginning of the practical phase of the apprenticeship program. A permit shall be issued upon verification of the application for apprenticeship training.

(e) The apprenticeship training shall begin upon the approval of the apprentice application by the board.

(f) The apprenticeship program shall be of not less than six nor more than twelve months duration from the date of issuance of the permit. Extension may be granted by the board for unusual or special circumstances.

(g) No person may undergo an apprenticeship training program without a permit.

(h) Upon completion of the apprenticeship training, the applicant is not required to undergo another apprenticeship training.

(i) The academic course of study shall be as follows:

(1) Not less than fifty hours of anatomy, physiology, and structural kinesiology;

(2) Not less than one hundred hours of theory and demonstration of massage which shall include:

(A) The proper procedure in massaging (concerning the protection of both client and massage therapist);

(B) Record keeping;

(C) Hygiene;

(D) Theory;

(E) Technique for specific conditions;

(F) Contraindications of massage for specific techniques according to conditions;

(G) Draping; and

(H) Assessment of the client's condition and the general technique to be applied.

The requirements of subsection (i)(1) and (2) shall be taught by a school which is licensed by the state department of education, the University of Hawaii or other institutions approved by the board. The courses outlined in subsection (i)(1) and (2) may be obtained through workshops given by a massage therapist who has been licensed for at least three years and who has received approval from the board. The request for such an approval shall include: the subject to be taught[~~:~~], when[~~:~~], where[~~:~~], by whom[~~:~~], and the duration of the workshop. The request for a workshop shall be submitted to the board for approval not less than sixty days before the commencement of each workshop. All courses that are completed as outlined in subsection (i)(1) and (2) shall be properly certified and a certificate of successful completion shall be issued by the school or an approved massage workshop.

(j) The course of study for the six months of apprenticeship training program with a minimum of four hundred twenty hours is as follows:

(1) Clinical operations - seventy hours
  (A) Sanitation - (i.e., application of department of health regulations, linen, towels) - thirty hours
  (B) Office procedures - (i.e., answering phone, taking appointments, client rapport) - thirty hours; and
  (C) Record keeping - (client records) - ten hours.
(2) Advanced techniques - forty hours
  (A) Observation of classroom instructors - (twenty hours); and
  (B) Consulting - (twenty hours).
(3) Hands on supervised massage with record keeping - three hundred ten hours.

(k) This apprenticeship does not apply to all persons who are now licensed in this State.

(l) The apprentice may request a change in sponsor provided that a written request is submitted to the board for approval. The request shall include the reason or reasons why a change is being made, the date, and the letter of agreement with the new sponsoring massage therapist.

(m) The apprentice shall be required to know and understand the laws and rules regulating massage.

(n) The applicant shall show proof of having a current certificate of completion of both the infant and adult cardiopulmonary resuscitation [~~(CPR)~~] training course issued by the American Red Cross or American Heart Association. The course cannot be completely online and must have a hands-on training component.

(o) Cardiopulmonary resuscitation classes sponsored by other providers will need to show curriculum content consistent with American Heart Association or American Red Cross guidelines. Applicants[~~,~~] who have a [~~CPR~~] cardiopulmonary resuscitation certification other than from the American Red Cross or American Heart Association may request for a waiver provided:

(1) That the applicant [~~show~~] shows proof of a current certificate of completion;

(2) That the applicant [~~provide~~] provides the board with a curriculum of the [~~CPR~~] cardiopulmonary resuscitation certification training course;

(3) That the applicant [~~provide~~] provides the name and the address of the course sponsor; and

(4) That the applicant [~~provide~~] provides to the board all information pertaining to the course sponsor's credentials and accreditation.

(p) The apprenticeship program training report shall be properly completed by the sponsoring massage therapist. A copy of the training report shall be given to the apprentice to be attached to the application for examination. [Eff 3/28/66; am 4/4/70; am and ren §16-84-23, 6/22/81; am and comp 4/9/82; am

and comp 7/19/87; am and comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §452-6)

SUBCHAPTER 7

EXAMINATION

§16-84-27 Examination requirements. (a) An applicant for a license to practice massage shall complete an apprenticeship program as outlined in section 16-84-23 or the course of study as a massage student outlined in section 16-84-48 and pass a written clinical competency examination in the English language. The board may contract with professional testing services to prepare, administer, and grade the examination. The examination shall be designed to test an applicant as follows:

(1) Applicant's knowledge of anatomy, physiology, and structural kinesiology; and

(2) Applicant's knowledge of the theory of massage.

A passing grade shall be seventy-five points [~~(75.00)~~]. An applicant must have a passing grade in order to be licensed.

~~[(b) The examination shall be conducted within the State four times a year as determined by the board.]~~

~~[(c)]~~ (b) Blind persons shall not be exempt from taking the examination to qualify, provided that the written clinical competency examination may be administered orally.

~~[(d) The deadline for submitting the application for examination shall be forty-five days prior to the date of the examination.]~~

~~[(e)]~~ (c) An applicant who has taken the massage examination prior to June 4, 1986 and failed

one or more parts of the examination shall be given credit for the part or parts passed and be permitted to be reexamined in the parts failed for three consecutive times; provided that reexamination of parts failed will be allowed only through March 1987. Thereafter the applicant forfeits all previous credits and must retake the examination and meet the requirements set forth in this section. [Eff 3/28/66; am 4/4/70; am and ren §16-84-27, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; am and comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §§452-13(3), 452-14)

SUBCHAPTER 8

FEES-REPEALED

§16-84-31 Repealed. [R 4/9/82]

SUBCHAPTER 9

PRACTICE AND PROCEDURE

§16-84-35 Administrative practice and procedure. The rules of practice and procedure for massage therapists[~~,~~] and massage establishments[~~, and out-call massage services~~] shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs which are incorporated by reference and made a part of this chapter. [Eff and comp 7/19/87; comp 3/26/90; am and comp] (Auth: HRS §§91-2, 452-6) (Imp: HRS §§91-2, 452-6)

SUBCHAPTER 10

ORAL TESTIMONY

§16-84-39 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

(1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;

(2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;

(3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;

(4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;

(5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

(6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the [~~hearings~~] hearing relief, declaratory relief or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 7/19/87; comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §92-3)

SUBCHAPTER 11

ADVERTISING

§16-84-43 Advertising. (a) Any person advertising as being able to perform massage in any form shall have received training in the massage technique that is being advertised.

(b) A licensee may advertise as being able to perform the type of massage known as Rolfing if the licensee has received basic Rolfing training in classes sponsored by the Rolf Institute and been certified as a Rolfer and given membership in the institute. [Eff and comp 3/26/90; comp] (Auth: HRS §§452-6, 452-23) (Imp: HRS §452-23)

SUBCHAPTER 12

MASSAGE STUDENTS

§16-84-48 Requirements for massage students. (a) The student program shall consist of not less [~~then~~] than five hundred seventy hours. In addition, the student shall successfully complete a cardiopulmonary resuscitation training program[~~.~~] consistent with the requirements in section 16-84-23(n) and (o).

(b) The curriculum of the massage school shall contain the following:

(1) Not less than fifty hours of anatomy, physiology, and structural kinesiology[~~÷~~];

(2) Not less than one hundred hours of theory and demonstration of massage which shall include:

(A) The proper procedure in massaging (concerning the protection of both client and massage therapist);

(B) Record keeping;

(C) Hygiene;

(D) Theory;

(E) Technique for specific conditions;

(F) Contraindications of massage for specific techniques according to conditions;

(G) Draping; and

(H) Assessment of the client's condition and the general technique to the applied;

(3) Not less than four hundred [~~and~~] twenty hours of practical massage training under the supervision of a teacher in a school setting.

(c) Students who complete a course consisting of at least five [~~hundred and seventy hours~~] hundred seventy hours course from a curriculum approved school by the American Massage Therapy Association [~~(AMTA)~~] or the Rolf Institute shall be eligible to sit for the written clinical competency examination.

(d) Students who complete a course of study in a school approved by the state department of education

shall be eligible to sit for the written clinical competency examination if the curriculum of the school meets the requirements of subsection (b).

(e) An applicant shall provide the board with written proof that the applicant has successfully completed the required course of study in a massage school approved by the department of education, American Massage Therapy Association [~~(AMTA)~~], or the Rolf Institute. [Eff and comp 3/26/90; am and comp] (Auth: HRS §452-6) (Imp: HRS §452-6)

SUBCHAPTER 13

CONTINUING EDUCATION

§16-84-49. Continuing education courses; providers. (a) All eligible continuing education categories shall be learning experiences that enhance and expand the skills, knowledge, professionalism, or ethics of massage therapists that enable them to render competent professional service to clients, the profession, and the public.

(b) Two of the continuing education hours shall include first aid, cardiopulmonary resuscitation, or other emergency-related training courses. The courses shall require the following:

(1) Be completed and include a hands-on training component;

(2) Be sponsored by the American Red Cross or American Heart Association. Cardiopulmonary resuscitation classes sponsored by other providers will need to show curriculum content consistent with American Red Cross or American Heart Association guidelines; and

(3) Be limited to a maximum of two continuing education hours per biennium.

(c) The remaining ten continuing education hours shall be in any category that enhances the skills and knowledge of the massage therapist, including but not limited to professional ethics, theory and practice of massage therapy, modalities, and professional development.

(d) Practice-building business courses will not be approved.

(e) Distance learning courses will be approved. Distance learning includes courses taken by home study, whether delivered synchronously or asynchronously online by computer means, by live or recorded video or audio media, or by printed materials.

(f) One continuing education hour must consist of at least fifty minutes of any one clock hour during which the student participates in a learning activity in the presence of an instructor, or in a distance learning activity designed and delivered by a provider.

(g) Providers of the continuing education courses shall include:

(1) Massage schools approved by a state board of massage;

(2) Nationally accredited massage certifying organizations; and

(3) Local or national professional associations.

[Eff and comp] (Auth: HRS §452-6) (Imp: HRS §452-16)

§16-84-50 Completion certificates. (a) Upon completion of the continuing education course, the continuing education provider shall issue written evidence of attendance to each attendee. This certificate of attendance shall include the following information:

(1) Name of attendee;

(2) Name of provider;

(3) Course or program title, date, and location; and

(4) Number of continuing education hours.

(b) Each licensee shall be responsible for maintaining their own completion certificates in the case that they are audited." [Eff and comp] (Auth: HRS §452-6) (Imp: HRS §452-16)

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 and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 16-84, 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 MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

_____
NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

_____
Christopher J.I. Leong
Deputy Attorney General

IV. New Business

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 72, Acupuncture Practitioners, promulgated by DCCA

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

Date: 5/17/2024

Department or Agency: Commerce and Consumer Affairs, Professional and Vocational Lic

Administrative Rule Title and Chapter: Title 16 Chapter 72, Hawaii Administrative Rules

Chapter Name: Acupuncture Practitioners

Contact Person/Title: Risé Doi, Executive Officer

E-mail: rdoi@dcca.hawaii.gov Phone: (808) 587-8854

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

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

☐ Yes ☑ No

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

I. Rule Description:

☑ New ☑ Repeal ☑ Amendment ☑ Compilation

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

☐ Yes ☑ No

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

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

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

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

☑ Yes ☐ No

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

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

☐ Yes ☑ No

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

* * *

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

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

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.
   N/A

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

   a. Amount of the current fee or fine and the last time it was increased.
      N/A
   b. Amount of the proposed fee or fine and the percentage increase.
      N/A
   c. Reason for the new or increased fee or fine.
      N/A
   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
      N/A

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

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

   N/A

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

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

   N/A

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

   The proposed rules were discussed in open board meetings for which public notice was given.

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

      N/A

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

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

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

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

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

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

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

* * *

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HOʻOKELE

AHLANI K. QUIOGUE
LICENSING ADMINISTRATOR

BOARD OF ACUPUNCTURE

STATE OF HAWAII **| KA MOKUʻĀINA ʻO HAWAIʻI**
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA ʻOIHANA PILI KĀLEPA
P.O. BOX 3469
HONOLULU, HAWAII 96801
cca.hawaii.gov/pvl

May 22, 2024

Chair Mary Albitz
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

SENT VIA EMAIL: jetaime.k.ariola@hawaii.gov

RE: Small Business Impact Review of the Proposed Amendments to **Title 16, Chapter 72, Administrative Rules of the Board of Acupuncture**

Dear Chair Albitz,

Attached for your review is the draft of amendments being proposed to Title 16, Chapter 72 Hawaii Administrative Rules. We are seeking approval from the Small Business Regulatory Review Board to hold a public hearing on these amendments.

The Board approved the proposed rules at its October 6, 2022, meeting.

These amendments have been submitted and reviewed by the Office of the Attorney General as to substance.

The proposed amendments clarify definitions, scope of practice, education and training requirements, sanitation, and use of titles, and include non-substantive changes. An outline of the proposed changes are as follows:

Subchapter 2 Definitions. The Board clarified and added definitions in this subchapter.

Subchapter 3 Authorized practice; scope of practice; license. In this subchapter, the proposed amendments expand the authorized practice of acupuncture, the use of telehealth is clarified, and the prohibition of permanently implanting needles is stated. Record keeping guidelines are also described. Rules for acupuncture student interns are clarified and the duties and minimum standards of a supervising acupuncture practitioner is added.

Subchapter 4 Education and training requirements. In §16-72-14, the formal education and training requirements are amended. The use of titles is clarified in §16-72-17 to allow licensees to use the title of “Doctor of Acupuncture”, “D.Ac.” or similar title if the licensee has

earned a doctoral degree in acupuncture or traditional Oriental medicine from an acupuncture school.

Subchapter 5 Application for license. §16-72-20 is amended to include acupuncture and herbal medicine. Verification of education and training is amended in §16-72-23 to clarify the documents that must be submitted with an application. §16-72-27 is removed.

Subchapter 6 Examination. §16-72-33 is amended and requires that beginning January 2022, all applicants applying for a license as an acupuncturist shall pass all exams administered by the National Certification Commission or Acupuncture and Oriental Medicine ("NCCAOM"), or its successor testing agency, necessary to obtain a Diplomate of Oriental Medicine or its equivalent as determined by the Board. §16-72-36 is removed.

Subchapter 7 License renewal. Licensees will be required to submit a current cardiopulmonary resuscitation certification approved by the American Red Cross or American Heart Association.

Subchapter 8 Public health and sanitation. A few changes were made in this subchapter, including requiring a fresh disposable paper in the head area if the patient is being treated in a chair, clarifying sanitation before and after a treatment, using disposable needles, and disinfecting instruments. §16-72-54 Herbal disclosure is added.

Subchapter 9 Advertisement. §16-72-57 clarifies how licensed acupuncturists may advertise.

Other non-substantive amendments were also included for clarity and style.

After your review, the proposed amendments will be submitted to the Governor for approval to proceed with a public hearing.

If you have any questions, please contact me at (808) 587-8854 or by email at rdoi@dcca.hawaii.gov.

Thank you for your consideration in this matter.

Very truly yours,

Risé Doi

Risé Doi
Executive Officer
Board of Acupuncture

RECEIVED
By SBRRB at 8:33 am, May 23, 2024

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-72
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-72, Hawaii Administrative Rules, entitled "Acupuncture Practitioners", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 72

ACUPUNCTURE PRACTITIONERS

Subchapter 1 General Provisions

§16-72-1 Repealed
§16-72-2 Objective

Subchapter 2 Definitions

§16-72-3 Definitions

Subchapter 3 Authorized Practice; Scope of Practice; License

§16-72-4	Authorized practice of acupuncture
§16-72-5	Scope of practice of acupuncture
§16-72-6	Records
§16-72-7	Repealed
§16-72-8	Display of license
§16-72-9	Change of address
§16-72-10	Repealed
§16-72-11	Acupuncture student intern in clinical practice
§16-72-12	Duties and minimum standards of a supervising acupuncturist/acupuncture practitioner

Subchapter 4 Education and Training Requirements

§16-72-14	Formal education and training requirements
§16-72-15	Repealed
§16-72-16	Repealed
§16-72-17	Academic standards for the use of titles

Subchapter 5 Application for License

§16-72-20	Applications
§16-17-20.1	Application for an acupuncture intern permit
§16-72-21	Repealed
§16-72-22	Repealed
§16-72-23	Verification of education and training
§16-72-24	Repealed
§16-72-25	Documents in foreign language
§16-72-26	Sufficiency of documents
§16-72-27	Repealed
§16-72-28	Demand for hearing
§16-72-29	Repealed

Subchapter 6 Examinations

§16-72-33 Examination
§16-72-34 Repealed
§16-72-35 Language
§16-72-36 Repealed
§16-72-37 Repealed
§16-72-38 Repealed
§16-72-39 Repealed
§16-72-40 Repealed
§16-72-41 Repealed
§16-72-42 Repealed

Subchapter 7 License Renewal

§16-72-46 Renewal
§16-72-47 Renewal due date
§16-72-48 Failure to renew; forfeiture; restoration

Subchapter 8 Public Health and Sanitation

§16-72-52 Office
§16-72-53 Sanitation practices
§16-72-54 Herbal disclosure

Subchapter 9 Advertisement

§16-72-57 Use of titles
§16-72-58 Repealed
§16-72-59 Repealed

Subchapter 10 Practice and Procedure

§16-72-63 Administrative practice and procedure

Subchapter 11 Oral Testimony

§16-72-67 Oral testimony

SUBCHAPTER 1

GENERAL PROVISIONS

§16-72-1 Repealed. [R 12/30/82]

§16-72-2 Objective. This chapter is intended to clarify and implement chapter 436E, Hawaii Revised Statutes ("HRS"), to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 3/12/76; am and ren §16-72-2, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

SUBCHAPTER 2

DEFINITIONS

§16-72-3 Definitions. [~~The definition of terms as appearing in chapter 436E, HRS, shall be adopted by reference. In addition, as used in this chapter, the following definitions shall be included:~~] As used in this chapter:

"Accreditation Commission on Acupuncture and Herbal Medicine" is an independent accrediting body

that is recognized by the United States Department of Education ("USDOE") as the entity, in the United States, that is responsible for accrediting education programs for the preparation of acupuncture and herbal Medicine practitioners and professional post-graduate doctoral programs in acupuncture and herbal medicine.

"Accredited acupuncture program" means a professional program in acupuncture and herbal medicine that was accredited or recognized as a candidate for accreditation by the Accreditation Commission on Acupuncture and Herbal Medicine, its predecessor, or its successor entity.

"Acupuncture injection therapy", also known as point injection therapy, intra-muscular injection therapy, biopuncture, or aquapuncture, is a modern adjunctive acupuncture medicine technique in which a sterile liquid agent is injected into acupuncture points (including ashi trigger points) to promote, maintain or restore health and to prevent disease. It uses hypodermic needle techniques at specific acupuncture point locations to produce successful clinical outcomes in accordance with acupuncture medicine.

"Acupuncture medicine" also known as Traditional Chinese Medicine, Traditional Oriental Medicine, East Asian Medicine, and Kanpo, is a practice that identifies the pattern of disharmony in each patient and then builds an individualized treatment plan. It includes the practice of acupuncture with adjunctive therapies including but not limited to manual, mechanical, electrical, light, sound, electromagnetic, thermal therapy, herbal and nutraceutical medicines, lifestyle and nutritional counseling, movement, and other traditional and modern techniques.

"Acupuncture needle" means [~~a straight, slender rod~~] an FDA-approved Class II medical device which is a sterile filiform needle of various [~~length~~] lengths and [~~diameter,~~] gauges, tapered to a [~~sharp~~] point at one end for piercing or non-invasive stimulation of the skin, [~~with one~~] and the opposite end for manipulation or maintaining the needle in place [~~, and inserted by an acupuncture practitioner into~~

~~acupuncture points on the human body. A staple is not an acupuncture needle~~] .

"Acupuncture practitioner" or "acupuncturist" means a person holding a valid license issued by the board of acupuncture in the State.

[~~"Approved post-secondary school" or "post-secondary school" means:~~] "Acupuncture school" means:

(1) An institute, school, or college accredited by or recognized as a candidate for accreditation by an accrediting body recognized by the United States Department of Education [~~,~~] for professional acupuncture and herbal medicine and post-professional programs; or

(2) An institute, school, or college which, at the time the applicant completed the acupuncture courses, was accredited or a candidate for accreditation by an accrediting body recognized by the United States Department of Education; or

(3) [~~An institute, school or college whose curriculum is approved by the board, but which was not accredited or recognized as a candidate for accreditation because accreditation in acupuncture or another field of medical study was not yet available.~~] In the case of a foreign school, acupuncture school means an institute, school, or college which is licensed, approved, or accredited by the appropriate governmental authority or an agency recognized by the governmental authority of that country and whose curriculum is approved by the Board.

"Acupuncture student" means an individual who is currently enrolled in a professional accredited acupuncture and herbal medicine program.

[~~"Approved post-secondary school" in the case of a foreign school means an institute, school or college which is licensed, approved, or accredited by the appropriate governmental authority or an agency~~

~~recognized by a governmental authority of that country and whose curriculum is approved by the board.~~]

[~~"Approved school", "school approved by the board", or similar words or phrases used in reference to an institute, school, college, or program of acupuncture or traditional Oriental medicine that includes acupuncture means:~~

~~(1) For a person who files an application with the board prior to September 1, 2000, an institute, school, college, or program of acupuncture, or traditional Oriental medicine which, at the time of the applicant's graduation, is licensed, approved, a candidate for accreditation, or accredited by the appropriate governmental authority or an agency recognized by a governmental authority in that jurisdiction, state, or country and whose curriculum is approved by the board; or~~

~~(2) For a person who files an application with the board on or after September 1, 2000, an institute, school, college, or program of acupuncture or traditional Oriental medicine, which, at the time of the applicant's graduation, is accredited or recognized as a candidate for accreditation by any acupuncture or traditional Oriental medicine accrediting body recognized by the United States Department of Education;~~

~~Provided that "approved school" in the case of a foreign school means an institute, school, college, or program with a formal program in the science of acupuncture or traditional Oriental medicine which is licensed, approved, or accredited by the appropriate governmental authority or an agency recognized by a governmental authority in that country and whose curriculum is approved by the board.~~]

"Ashi needling", also known as "dry needling", "motor point needling", "intramuscular needling", and "myofascial trigger point needling" is an acupuncture technique that involves the insertion and retention or

non-retention of thin, non-medicated solid filiform needles into the body, muscles or connective tissues.

"Auricular acupuncture" is a diagnostic and a treatment system that stimulates specific acupuncture points with needle insertion, magnets or pellets on the external ear surface. It stimulates autonomic nervous system to maintain homeostasis, control pain and support detoxification.

"Board" means the board of acupuncture.

"Contact hour" or "hour" means a minimum of fifty minutes of organized classroom instruction or practical clinical training.

"Cupping" is a vasopneumatic therapy in which cups are applied to the body either with heat or manual vacuum suction as a way of improving circulation, releasing subcutaneous fascial and muscular adhesions, and relieving muscle pain. Cupping may involve the intentional bleeding of the skin prior to cup application.

"Director" means the director of the department of commerce and consumer affairs.

"Direct supervision" means that the supervising licensee is physically present during an intern's treatment of a patient. The licensee shall supervise and provide guidance to the intern in the diagnosis and treatment strategy of the patient.

"Functional disorder" means a condition of the human body in which the symptoms cannot be referred to any organic lesion or change of structure, as opposed to an organic disorder.

"Gua sha" is an instrument-assisted unidirectional press-stroking of a lubricated area of the body surface to intentionally create transitory therapeutic petechiae called 'sha' representing extravasation of blood in the subcutis as well as providing a deep stretch and release of the connective tissue around tense and tight muscles.

"Herbal medicine" means the use of a formula or single herbal remedy to promote, maintain and restore health. It includes the use of naturally occurring substances of botanical, animal, or mineral origin in

accordance with good manufacturing practice guidance. It does not include the use of controlled substances.

"Laser acupuncture" means utilizing Class II Low Level FDA approved cold laser or biostimulation laser to promote biological function, regenerate tissue, reduce inflammation and alleviate pain.

"Lifestyle and dietary consult" incorporates traditional nutritional therapy concepts of food as medicine, a concept that emphasizes the importance of a food's character with balanced food consumption. Also includes herbal and nutritional supplements, as well as environmental factors, meditation, movement and exercise.

"Moxibustion" means the process of heating moxa, traditionally artemisia vulgaris, on meridians or points on the body with the intent to produce analgesia, support the immune system, and modulate bodily systems.

"NCCAOM" means the "National Certification Commission for Acupuncture and Oriental Medicine" or its successor agency.

"Office" means the physical facilities used for the practice of acupuncture.

[~~"Traditional Oriental medicine" means the system of the healing art which places the chief emphasis on the flow and balance of energy in the human body as being the most important factor in maintaining the well-being of the body in health and disease and includes the practice of acupuncture and herbal medicine.~~]

"Tui na" is a hands-on body treatment utilizing specific manual techniques involving manipulation of muscles, tendons, joints and bones to regulate energy and blood flow, relieve pain, and improve body dynamics. [Eff 3/12/76; am and ren §16-72-3, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

SUBCHAPTER 3

AUTHORIZED PRACTICE; SCOPE OF PRACTICE; LICENSE

§16-72-4 Authorized practice of acupuncture. An acupuncture practitioner is authorized to [~~conduct~~] examine and diagnose in accordance with traditional and modern practices for the purpose of treatment [~~of the human body~~] by [~~means of stimulation of a certain acupuncture~~] piercing or stimulating, or both, a point or points [~~for the purpose of controlling and regulating~~] to regulate neurovascular, immunological, endocrine and pain pathways and the flow and balance of energy [~~in the body~~] . The practice includes [~~the techniques of piercing the skin by inserting needles and point stimulation by the use of~~] cutaneous or invasive stimulation of points on the skin with needles. Techniques included are acupressure, electrical, mechanical, thermal therapy, moxibustion, cupping, [~~or~~] manual therapy and myofascial release such as tui na and gua sha, laser acupuncture, acupuncture injection therapy, auricular acupuncture, lifestyle and dietary consultation, and traditional therapeutic means[~~.~~] ,including prescribing and dispensing herbal medicine. [Eff 3/12/76; am and ren §16-72-4, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-2)

§16-72-5 Scope of practice of acupuncture. Acupuncture is used in a wide range of treatment. [~~However, the board recognizes that guidelines on the~~] The scope of practice of an acupuncture practitioner [~~should be imposed and establishes the following permissible practices of authorized treatment which~~] consists of treatment for pain relief and analgesia;

functional and musculoskeletal disorders, including functional components of diseases; and the maintenance of well-being, promotion of health, and physiological balance. Telehealth is allowed. Permanently implanted needles are not allowed. [Eff 3/12/76; am and ren §16-72-5, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §§436E-2, 436E-7)

§16-72-6 Records. A licensee shall keep accurate and secure records of each patient the licensee treats. Hard copy records shall be stored in a locked cabinet. Electronic records shall be digitally secure. The records shall include the name of the patient, date of birth, the date or dates treatment was performed, the indication and nature of treatment given, supplements and herbal prescriptions and any other relevant data deemed important by the licensee. Records shall be [~~kept on file for a minimum of seven years~~] maintained in accordance with applicable law and shall be open to inspection at any time by the board or [~~its~~] a duly authorized representative. [Eff 3/12/76; am and ren §16-72-6, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

§16-72-7 Repealed. [R 10/26/00]

§16-72-8 Display of license. The current license certificate shall be conspicuously displayed in the office of practice. [Eff 3/12/76; am and ren §16-72-8, 6/22/81; comp 12/30/82; comp 11/20/86; comp

11/25/88; comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

§16-72-9 Change of address. A licensee shall notify the board of any change of address within thirty days of the change. [Eff 3/12/76; am and ren §16-72-9, 6/22/81; am and comp 12/30/82; comp 11/20/86; comp 11/25/88; comp 10/26/00; comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

§16-72-10 Repealed. [R 10/26/00]

§16-72-11 [~~Supervision and functions of an acupuncture intern in clinical practice.~~] Acupuncture student intern in clinical practice. [~~(a) No licensee shall allow an acupuncture intern to perform acupuncture treatment without the licensee's direct supervision.~~] An acupuncture student intern may engage in the practice of acupuncture only if the student intern is under the on-site direct supervision of the licensee who is registered with the board to supervise the student intern. The clinic and supervising licensee must be under the authority of the acupuncture school. [~~Direct supervision means that the licensee is physically present prior to, during, and after the intern's treatment of a patient, by instructing and providing active guidance to the intern in the diagnosis and treatment of the patient. In addition, the licensee shall ensure that:~~

~~(1) All patients shall be notified and shall consent to treatment by an acupuncture intern; and~~

~~(2) Every acupuncture intern under the licensee's supervision shall wear a conspicuously placed name tag stating the~~

~~person's name and the words "acupuncture intern." The words "acupuncture intern" shall have letters at least one half inch high.~~

~~(b) Acupuncture services rendered by an acupuncture intern may include the items delineated in the scope of practice of acupuncture as set forth in section 16-72-5.~~

~~(c) Any violation of this section shall constitute professional misconduct.~~] [Eff and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §§436E-2, 436E-3.6, 436E-7)

§16-72-12 Duties and minimum standards of a supervising acupuncturist/acupuncture practitioner. (a) A supervising acupuncturist/acupuncture practitioner shall:

(1) Supervise all acupuncture treatments provided by an acupuncture student intern;

(2) Be responsible for managing all aspects of the acupuncture treatment provided by the acupuncture student intern;

(3) Permit only individuals with a current student intern permit to engage in the practice of acupuncture in the clinic of the accredited school program;

(4) Inform all patients that treatment will be provided by a student intern;

(5) Ensure that every student intern wears a name tag that identifies the student by their name and the term "acupuncture student intern". The term "acupuncture student intern" shall be at least one-half of one inch in height;

(6) Any violation of this section shall constitute professional misconduct in violation of this chapter and chapter 436E, HRS. [Eff and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

SUBCHAPTER 4

EDUCATION AND TRAINING REQUIREMENTS

§16-72-14 Formal education and training requirements. [~~(a) For applicants applying before September 1, 2000:~~

~~(1) An applicant shall submit satisfactory proof of graduation from an approved school, and satisfactory proof of completing a course of study of formal education and clinical training consisting of not less than one thousand five hundred hours.~~

~~(2) To satisfy the formal educational requirements, the applicant shall complete a course of study resulting in the award of a certificate or diploma, consisting of not less than two academic years (not less than six hundred hours) of study of acupuncture or traditional Oriental medicine. The course of study shall cover, but shall not be limited to, the following subjects:~~

~~(A) History and philosophy of traditional Oriental medicine (Nei Ching, Taoism, Chi and Hsieh, Yin and Yang, and others);~~

~~(B) Traditional human anatomy, including location of acupuncture points;~~

~~(C) Traditional physiology, including the five elements organ theory;~~

~~(D) Traditional clinical diagnosis, including pulse diagnosis;~~

~~(E) Pathology, including the six Yin and seven Chin;~~

~~(F) Laws of acupuncture (mother and son, husband and wife, and five elements);~~

~~(G) Classification and function of points;~~

~~(H) Needle techniques;~~
~~(I) Complications;~~
~~(J) Forbidden points;~~
~~(K) Resuscitation;~~
~~(L) Safety and precautions;~~
~~(M) Use of electrical devices for diagnosis and treatment;~~
~~(N) Public health and welfare;~~
~~(O) Hygiene and sanitation;~~
~~(P) Oriental herbal studies; and~~
~~(Q) Clinical acupuncture practice.~~

~~(3) To satisfy the clinical training requirements, the applicant shall complete a course of training consisting of not less than twelve months (not less than nine hundred hours) of clinical internship training under the direct supervision of a licensed acupuncturist. The clinical internship training requirements may be obtained from a licensed acupuncturist at an approved school or from another clinical setting, from a licensed acupuncturist in private practice, or from any combination thereof. The licensed acupuncturist providing direct supervision shall:~~

~~(A) Have been licensed and actively practicing for a period of not less than five years prior to the start of the applicant's clinical internship training; and~~

~~(B) Have had a current, valid, and unencumbered license during the course of supervision.~~

~~(b) Notwithstanding the requirements of subsection (a), an applicant who started training prior to December 31, 1984, in a school approved by the board prior to December 31, 1984, and who completed the required training by December 31, 1989, and who files an application with the board before September 1, 2000, may qualify for licensure, provided that the applicant meets the requirements for examination and licensure as provided in chapter 436D,~~

~~HRS, and rules adopted by the board as they existed on December 31, 1984, so long as the school has not altered its program so as to lower standards for completion of the program, and provided the applicant submits satisfactory proof of graduation from an approved school, and satisfactory proof of completing a course of study of formal education and clinical training consisting of at least one thousand fifty-six hours.~~

~~(1) To satisfy the formal education requirements, the applicant shall have completed a course of study consisting of a minimum duration of eighteen months (at least five hundred seventy-six hours) of acupuncture or traditional Oriental medicine. The course of study shall cover, but not be limited to, the subjects listed in paragraph (a)(2).~~

~~(2) To satisfy the clinical training requirements, the applicant shall have completed a course of training consisting of a minimum duration of six months (at least four hundred eighty hours) of clinical training in the practice of acupuncture on human subjects under the direct supervision of a licensed acupuncturist. The clinical training requirements may have been obtained at an approved school, or from another clinical setting, from a licensed acupuncturist in private practice or from any combination thereof.~~]

~~[(c)]~~ (a) An applicant [~~applying on or after September 1, 2000,~~] shall submit satisfactory proof of graduation from an [~~approved~~] acupuncture school [~~and~~] with satisfactory proof of completing a course of study of formal education and clinical training [~~consisting of at least two thousand one hundred seventy five hours.~~] as set forth below:

(1) To satisfy the formal educational requirements, the applicant shall complete an acupuncture and traditional [~~Oriental~~] herbal medicine course of study [~~consisting~~

~~of not less than one thousand five hundred fifteen hours. The course of study shall cover, but not be limited to, the subjects listed in paragraph (a)(2).~~] consistent with the requirements set forth in chapter 436E, HRS.]

(2) To satisfy the clinical training requirements, the applicant shall complete a course of training [~~consisting of not less than six hundred sixty hours~~] as set forth below under the supervision of [~~a licensed~~] an acupuncturist consistent with the requirements set forth in chapter 436E, HRS. The clinical training requirements shall be obtained at an [~~approved~~] acupuncture school and shall not be obtained from [~~a licensed~~] an acupuncturist in private practice or another clinical setting unless it is a part of the clinical training curriculum of [~~an approved~~] such school. [Eff 3/12/76; am and ren §16-72-14, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-5)

§16-72-15 Repealed. [R 11/20/86]

§16-72-16 Repealed. [R 12/30/82]

§16-72-17 Academic standards for the use of titles. (a) Subject to the provisions herein, a licensee may use an earned degree title if the licensee has completed their education in an [~~approved~~] acupuncture school [~~that includes acupuncture coursework related to the degree~~].

(b) A licensee who was previously authorized by the board to use a doctoral designation, "D.Ac.", may continue to use that designation [~~until September 1, 2000~~] .

(c) [~~Commencing on September 1, 2000, no~~] No licensee shall be allowed to use the doctoral designations "Doctor of Acupuncture", "D.Ac.", or similar title unless that licensee has applied to and received the approval of the board to use the designation. In order for the licensee to receive the board's approval, the licensee shall demonstrate that the licensee has [~~:~~

~~(1) An earned doctoral degree in acupuncture or traditional Oriental medicine from an approved school, or shall have completed a program approved by the board in the study or practice of acupuncture or traditional Oriental medicine that consisted of at least five hundred hours in advanced academic education and training that is beyond that required for the L.Ac. entry level. The five hundred hours may include any combination of topics covered in categories I and II listed in "Appendix A" dated April 6, 2000, entitled "Doctoral Program" for determination of credential evaluation; and~~

~~(2) At least one thousand five hundred hours of clinical training and practice of acupuncture, traditional Oriental herbal medicine, or traditional Oriental physiotherapy, which may include laboratory work and presentation of scholastic instruction, that was obtained after the person commenced the doctoral studies.~~] an earned doctoral degree in acupuncture medicine from an acupuncture school.

(d) In determining whether a licensee meets the requirements to use the doctoral designation, the board may require additional information including, but not limited to, the licensee's school catalog course descriptions and documentation of the clinical training and practice of acupuncture.

~~[(c) A licensee who has earned a doctoral title and who wishes to use a doctoral designation after September 1, 2000, shall comply with subsection (c) herein.~~

~~(f) A licensee who has been awarded a "Ph.D." in acupuncture or traditional Oriental medicine shall be considered a non-practitioner and shall be permitted to use the designation of "Ph.D." in accordance with subsection 436E-13(b), HRS.~~] [Eff and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-13)

SUBCHAPTER 5

APPLICATION FOR LICENSE

§16-72-20 Applications. (a) Every person seeking a license to practice acupuncture or acupuncture and herbal medicine, or wishing to use any acupuncture title, in [~~the~~] this State shall file an application on a form provided by the board. All applications shall be completed in English and shall be accompanied by the following:

(1) The application fee as provided in rules adopted by the director in accordance with chapter 91, HRS [~~, and payable in the form of a personal check, a cashier's check, or a postal money order~~];

(2) Verification of the required education and training, as applicable;

(3) An affidavit signed by the applicant stating that the applicant has read and shall abide by the board's laws and rules (chapter 436E, HRS, and this chapter) governing the practice of acupuncture; and

(4) Any other documents deemed necessary by the board.

(b) An application for a license may be filed at any time by an applicant who has taken and passed the examination identified in section 16-72-33 and shall be accompanied by the items required in subsection (a). The applicant shall be responsible for having the testing contractor verify, directly to the board, that the applicant has [~~passing score of~~] passed the examination [~~as required in section 16-72-36~~]. [Eff 3/12/76; am and ren §16-72-20, 6/22/81; comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §§436E-5, 436E-13)

§16-72-20.1 Application for an acupuncture intern permit. (a) An application for a permit to work for a period of four years or until graduation, whichever comes first, as an acupuncture intern under the direct supervision of a Hawaii licensed acupuncture practitioner may be filed with the board at any time and shall be accompanied by the required fee. The board may delegate to the board's executive officer the authority to issue an acupuncture intern permit to qualified applicants.

(b) An applicant shall provide verification of the following to the board:

(1) Evidence that the applicant has satisfactorily completed at least three semesters of instruction at an approved school and is currently enrolled in [~~or is a graduate of~~] an [~~approved~~] acupuncture school;

(2) A copy of the applicant's [~~diploma or~~] official transcript from an [~~approved~~] acupuncture school [~~showing the applicant's date of graduation~~] or a letter from the dean or registrar of an [~~approved~~] acupuncture school stating that the applicant has completed at least three semesters [~~shall be submitted with the application~~]; and

(3) The name and license number of the supervising acupuncture practitioner [~~; provided that effective September 1, 2000, the applicant shall also provide the name of the approved school through which the clinical training is being obtained~~] .

(c) An acupuncture intern permit may be reissued only once for a period not to exceed one year, upon written request to the board no less than forty-five days prior to expiration and payment of the required fee. [Eff and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-3.6)

§16-72-21 Repealed. [R 11/20/86]

§16-72-22 Repealed. [R 12/30/82]

§16-72-23 Verification of education and training. [~~(a) For an applicant applying before September 1, 2000, the following documents shall be submitted as proof of the education and training of the applicant, provided the requirements of subsection 16-72-14(a) or (b) are met, as applicable:~~

~~(1) Verification of academic or educational study and training at an approved school consisting of:~~

~~(A) A certified transcript received by the board directly from an approved school and a photostatic copy of the diploma, certificate, or other certified documents from an approved school bearing an official school seal evidencing completion of a program in acupuncture or traditional Oriental medicine which includes acupuncture,~~

~~and also a copy of the curriculum demonstrating the areas of study taken at an approved school; or~~

~~(B) If the school no longer exists or if the school's records have been destroyed for some plausible reason, applicant may submit a sworn affidavit so stating and shall name the school, its address, dates of enrollment and curriculum completed, and the board, in its discretion, may request the applicant also to provide verification from the appropriate governmental authority or an agency recognized by a governmental authority regarding the school's closing or of the unavailability of the school's records, and such other information and documents as the board may deem necessary; and~~

~~(C) A statement from the accrediting agency or appropriate governmental authority that the school is accredited or is a candidate for accreditation by an acupuncture accrediting agency recognized by the United States Department of Education, or that the school is licensed, approved, or accredited by the appropriate governmental authority or an agency recognized by a governmental authority in that jurisdiction, state, or country.~~

~~(2) Verification of clinical training consisting of:~~

~~(A) The name(s) of the licensed acupuncture practitioner(s) under whom the applicant served for the clinical training, the practitioner's license number, a verification of practitioner's dates of licensure, street address of business, the number~~

~~of hours, dates, and length of training completed by the applicant, and a description of training received by the applicant; and~~

~~(B) A certification signed by the acupuncture practitioner under oath that applicant completed a course of clinical training under the practitioner's direction as required in paragraph 16-72-14(a)(3) or in paragraph 16-72-14(b)(2), as applicable; or~~

~~(C) If the practitioner is deceased or whereabouts not known, the applicant shall so state and shall submit a sworn affidavit certifying to the applicant's completion of clinical training and other documents as the board may deem necessary.~~]

~~[(b)]~~ [~~For applicants applying on or after September 1, 2000, the~~] The following documents shall be submitted as proof of the education and clinical training of the applicant at an [~~approved~~] acupuncture school provided they meet the requirements of [~~paragraph~~] section 16-72-14 [~~(c):~~] (a):

(1) A certified transcript received directly from an [~~approved~~] acupuncture school and a [~~photostatic~~] copy of diploma, certificate, or other certified documents from an [~~approved~~] acupuncture school bearing an official school seal evidencing completion of a program in [~~acupuncture or traditional Oriental medicine,~~] acupuncture medicine, [~~which includes acupuncture,~~] and also a copy of the curriculum demonstrating the areas of study taken at an [~~approved~~] acupuncture school; or

(2) If the school no longer exists or if the school's records have been destroyed for some plausible reason, the applicant may submit a sworn affidavit so stating and shall name the school, its address, dates of

enrollment and curriculum completed and shall also provide verification, from the acupuncture accrediting agency recognized by the United States Department of Education, or in the case of a foreign school, verification from the appropriate governmental authority or an agency recognized by a governmental authority, of the school's closing or of the unavailability of the school's records, and such other information and documents as the board may deem necessary; and

(3) A statement from the accrediting agency or appropriate educational governmental authority that the school is accredited or is a candidate for accreditation by an acupuncture accrediting agency recognized by the United States Department of Education, or in the case of a foreign school, that the school is licensed, approved, or accredited by the appropriate educational governmental authority or an agency recognized by a governmental authority in that country.

[Eff 9/12/76; am and ren §16-72-23, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§436E-5, 436E-7) (Imp: HRS §436E-5)

§16-72-24 Repealed. [R 11/20/86]

§16-72-25 Documents in foreign language. All documents submitted in a foreign language shall be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that the translator is competent in both the language of the document and the English language and that the translation is a true

and complete translation of the foreign language original, and sworn to before a notary public. Translation of any document and any other expenses relative to a person's application shall be at the expense of the applicant. [Eff 3/12/76; am and ren §16-72-25, 6/22/81; am and comp 12/30/82; comp 11/20/86; comp 11/25/88; comp 10/26/00; am and comp] (Auth: HRS §§436E-5, 436E-7) (Imp: HRS §436E-5)

§16-72-26 Sufficiency of documents. In all cases the board's decision as to the sufficiency of documentation shall be final. The board may request further proof of qualification and may also require a personal interview with the applicant to establish the applicant's qualification. [Eff 3/12/76; am and ren §16-72-26, 6/22/81; am and comp 12/30/82; comp 11/20/86; comp 11/25/88; comp 10/26/00; comp] (Auth: HRS §436E-7) (Imp: HRS §436E-5)

[~~**§16-72-27 Deadline for filing application for a license.** The application for a license together with the accompanying documents shall be filed at least seventy-five days before the date of the examination.~~] [Eff 3/12/76; am and ren §16-72-27, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; R]

§16-72-28 Demand for hearing. Any person aggrieved by the denial or refusal of the board to issue, renew, restore, or reinstate a license, or by the denial or refusal of the board to permit the use of an academic designation shall submit a request for a contested case hearing pursuant to chapter 91, HRS, and [~~Hawaii Administrative Rules ("HAR"),~~] chapter 16-

201, HAR, the rules of practice and procedure, within sixty days of the date of the refusal or denial. Appeal to the circuit court under section 91-14, HRS, or any other applicable statute, may only be taken from the board's final order. [Eff 3/12/76; am and ren §16-72-28, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§436B-24, 436E-7) (Imp: HRS §§436B-24, 436B-25, 436E-7)

§16-72-29 Repealed. [R 10/26/00]

SUBCHAPTER 6

EXAMINATIONS

§16-72-33 Examination. (a) [~~Every applicant applying for a license to practice as an acupuncturist shall pass the National Certification Commission for Acupuncture and Oriental Medicine's (NCCAOM) written comprehensive examination or such other written examination as the board may determine.~~] Effective July 2025, all applicants applying for a license as an acupuncturist shall pass all exams administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), or its successor testing agency, necessary to obtain a Diplomate of Oriental Medicine or its equivalent as determined by the board.

(b) The examination shall be consistent with the practical and theoretical requirements of acupuncture practice as provided by chapter 436E, HRS, and this chapter. The examination shall stand on its own merits. An applicant shall pass the examination before the applicant can be licensed to practice acupuncture.

(c) The board may contract with an independent testing [~~contractor~~] agency to [~~provide~~] administer an examination for the board.

(d) Applicants with disabilities may be afforded special testing arrangements and accommodations provided proper application is made on a form supplied by the board and provided further that they qualify for such arrangements as determined by the board or its designee. [Eff 3/12/76; am and ren §16-72-33, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§436E-5, 436E-7) (Imp: HRS §§436E-5, 436E-7)

~~**§16-72-34 Frequency.** Examinations shall be conducted at least once a year.~~ [Eff 3/12/76; am and ren §16-72-34, 6/22/81; comp 12/30/82; am and comp 11/20/86; comp 11/25/88; comp 10/26/00; R]

§16-72-35 Language. The examination shall be given in English; provided that the board may give the written examination in another language upon the applicant's request and subject to the availability of such an examination from the independent testing contractor. [Eff 3/12/76; am and ren §16-72-35, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; comp] (Auth: HRS §§436E-5, 436E-7) (Imp: HRS §§436E-5, 436E-7)

[~~**§16-72-36 Passing score.** The passing score for the written comprehensive examination shall be that minimum score for entry level competency as determined and recommended by the board's testing contractor in accordance with standard psychometric procedures. The~~

~~passing score for such other written examination required by the board shall be determined by the board.~~] [Eff 3/12/76; am and ren §16-72-36, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; R]

§16-72-37 Repealed. [R 10/26/00]

§16-72-38 Repealed. [R 11/20/86]

§16-72-39 Repealed. [R 11/20/86]

§16-72-40 Repealed. [R 11/20/86]

§16-72-41 Repealed. [R 10/26/00]

§16-72-42 Repealed. [R 10/26/00]

SUBCHAPTER 7

LICENSE RENEWAL

§16-72-46 Renewal. (a) Application for renewal, regardless of the issuance date of the license, shall be made on a form provided by the board

on or before June 30 of each odd-numbered year and shall be accompanied by the appropriate renewal fee as provided in rules adopted by the director in accordance with chapter 91, HRS.

(b) For renewal, licensees must provide proof of a current, valid CPR (cardiopulmonary resuscitation) certification approved by the American Red Cross or the American Heart Association. [Eff 3/12/76; am and ren §16-72-46, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-9)

§16-72-47 Renewal due date. A renewal fee transmitted by mail shall be considered filed when due if the envelope bears a postmark of June 30 of each odd-numbered year or any prior date. Payment of the renewal fee shall be in the form of a personal check, a cashier's check, online payment, or a postal money order. [Eff 3/12/76; am and ren §16-72-47, 6/22/81; comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-9)

§16-72-48 Failure to renew; forfeiture; restoration. Failure to pay the renewal fee when due shall constitute automatic forfeiture of the license. However, a license which has been forfeited for failure to pay the renewal fee on time may be restored [~~within one year after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of the appropriate restoration fees as provided in rules adopted by the director in accordance with chapter 91, HRS.~~] [~~After one year from the date of forfeiture,~~] in accordance with chapter 436E, HRS, and any licensing renewal requirements

provided by law, when a written application and payment of the restoration fees as provided in the rules (adopted by the director in accordance with chapter 91, HRS) are submitted. If the license is not restored within the timeframe stated in chapter 436E, HRS, the license shall not be restored and the person shall be treated as a new applicant and shall meet all the requirements of a new applicant. [Eff 3/12/76; am and ren §16-72-48, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §§436B-14, 436E-9)

SUBCHAPTER 8

PUBLIC HEALTH AND SANITATION

§16-72-52 Office. When acupuncture is conducted in a building used for residential purposes, a room or rooms shall be set apart as an office for the practice and shall be used solely for this purpose. It shall be equipped with a washroom and toilet facilities. An acupuncture office may be inspected at any time during normal business hours by the board or any authorized employee of the department of commerce and consumer affairs. [Eff 3/12/76; am and ren §16-72-52, 6/22/81; am and comp 12/30/82; comp 11/20/86; comp 11/25/88; comp 10/26/00; comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

§16-72-53 Sanitation practices. Required practices shall include:

(1) A fresh, disposable paper or a fresh sheet shall be used on the examining table for

each patient; or a fresh disposable paper in the head area if treated in a chair;

(2) Hands shall be washed with soap and water or minimum seventy per cent alcohol germicide before handling a needle and [~~between~~] before and after treatment of different patients;

(3) A piercing needle shall be [~~previously unused and sterilized;~~] disposable;

(4) A piercing disposable needle shall not be used more than once per treatment and shall be disposed of immediately after use in the manner prescribed in paragraph [~~(8)~~] (7) below;

(5) Skin, in the area of any acupuncture procedure, shall be thoroughly swabbed with germicidal solution before using any needles;

~~[(6) If the sterility of an unused needle or instrument has been compromised, it shall be sterilized at a minimum temperature of 250°F (or 121°C) for not less than thirty minutes at fifteen pounds of pressure per square inch before usage;~~

~~(7)]~~ (6) Prior to its usage on a patient, a reusable instrument, such as cups used in cupping, or a non-piercing acupuncture needle shall be sterilized [~~at a minimum temperature of 250°F (or 121°C) for not less than thirty minutes at fifteen pounds of pressure per square inch;~~] in an autoclave according to the manufacturer's specifications, or by a disinfectant agent;

~~[(8)]~~ (7) All used needles for disposal shall be placed in a hazardous waste container that meets standards set by the department of health. All handling of the container, including but not limited to treating, transporting, and disposing of the container, shall conform with the laws and rules of the department of health; and

~~[(9)]~~ (8) Other reasonable sanitation procedures and practices recommended by governmental agencies or manufacturers shall be followed to protect the health and safety of patients and the public. [Eff 3/12/76; am and ren §16-72-53, 6/22/81; am and comp 12/30/82; comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

§16-72-54 Herbal disclosure. An acupuncture practitioner who dispenses custom or compounded herbal medicines must properly label, attach, and disclose the following information:

(1) Patient's name;

(2) Description of contents of herb(s) or formula;

(3) Direction of usage;

(4) Date when dispensed, dosage, and expiration date; and

(5) Name and address of dispenser or provider.

All descriptions and literature shall be in English. These requirements do not apply to herbal medicines dispensed in their original containers with the original manufacturer's labeling. [Eff and comp] (Auth: HRS §436E-7) (Imp: HRS §436E-7)

SUBCHAPTER 9

ADVERTISEMENT

§16-72-57 Use of titles. (a) An acupuncturist shall not misrepresent one's academic designation,

professional title, qualification, or affiliation in an advertisement.

~~[(b) A licensee who has been awarded an earned doctoral degree from an approved post-secondary school, post-secondary school, approved school, or school approved by the board, and who meets the academic standards set forth in section 16-72-17 may use the title "Doctor," "Dr.," "Doctor of Acupuncture," "D.Ac.," provided that the word "Acupuncturist" immediately follows the licensee's name.~~]

~~[(c)]~~ (b) [~~A licensee who was previously approved by the board to use the doctoral title prior to adoption of this chapter may continue to use the designation until September 1, 2000.~~] In order to [~~continue to~~] use the doctoral title [~~after September 1, 2000,~~] the licensee shall apply for the use of [~~an academic~~] a professional degree title and shall provide proof to the board of meeting the academic standards of section 16-72-17. [~~The licensee's failure to apply and to meet the academic standards of section 16-72-17 by September 1, 2000, shall result in the loss of all rights to the continued usage of the doctoral title and the licensee shall immediately refrain from using the title.~~]

(c) A licensee who has earned a doctoral degree from an acupuncture school may use the post nominal title awarded in addition to "Doctor", "Dr.", "D.Ac." and "Doctor of Acupuncture." The post nominal title "D.Ac." shall follow the earned professional degree title. When "Doctor" or "Dr." is used preceding the licensee's name, then "Doctor of Acupuncture" or "D.Ac." must also be listed.

(d) A licensee who has a non-practitioner's doctorate including an honorary degree or titles in a field shall not use the title "Dr." or "doctor" in advertisements or other materials visible to the public pertaining to the acupuncture practice. [Eff 3/12/76; am and ren §16-72-57, 6/22/81; am and comp 12/30/82; am and comp 11/20/86; am and comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§436E-7, 436E-13) (Imp: HRS §436E-13)

§16-72-58 Repealed. [R 11/20/86]

§16-72-59 Repealed. [R 11/20/86]

SUBCHAPTER 10

PRACTICE AND PROCEDURE

§16-72-63 Administrative practice and procedure. The rules of practice and procedure shall be as provided in [~~HAR,~~] chapter 16-201, HAR, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§91-2, 436E-7) (Imp: HRS §§91-2, 436E-7)

SUBCHAPTER 11

ORAL TESTIMONY

§16-72-67 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

(1) Each person seeking to present oral testimony is requested to notify the board

no later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;

(2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;

(3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;

(4) Persons presenting oral testimony, at the beginning of the testimony, shall identify themselves and the organization, if any, that they represent;

(5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

(6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this chapter shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearing relief, declaratory relief, or rule relief provisions of [~~HAR,~~] chapter 16-201[~~.~~]<u>, HAR.</u>

(c) Nothing in this chapter shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda." [Eff and comp 11/20/86; comp 11/25/88; am and comp 10/26/00; am and comp] (Auth: HRS §§92-3, 436E-7) (Imp: HRS §92-3)

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

3. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

4. These amendments to and compilation of chapter 16-72, 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 MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

_____
NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

_____
Christopher J.I. Leong
Deputy Attorney General

IV. New Business

D. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 11 Chapter 208.1, Underground Storage Tanks, promulgated by DOH

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

Date: 5/28/2024

Department or Agency: Health

Administrative Rule Title and Chapter: Title 11 Chapter 280.1

Chapter Name: Underground Storage Tanks

Contact Person/Title: Lauren Cruz, Environmental Health Specialist

E-mail: Lauren.Cruz@doh.hawaii.gov Phone: (808) 586-4244

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

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

☐ Yes ☑ No

If "**Yes**," provide details: Not yet, but will be posted 30 days before public hearing/during comment period

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☐ Compilation

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

☑ Yes ☐ No

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

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

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

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

☐ Yes ☑ No

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

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

☐ Yes ☑ No

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

* * *

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

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

   Please see attachment for responses to all questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Amendment of Hawaii Administrative Rules, Title 11, Chapter 280.1, "Underground Storage Tanks"

Background on Chapter 11-280.1, HAR

The Department of Health (Department) is proposing to amend chapter 11-280.1, Hawaii Administrative Rules (HAR), which regulates the installation and operation of underground storage tank (UST) systems and the cleanup of releases from UST systems. Tank system owners and operators are required to clean up releases and remediate contaminated soil, groundwater, and surface water to a level that is protective of human health and the environment. Most UST system sites are gasoline service stations, but the chapter also regulates other types of UST systems, including systems storing fuel for emergency generators at sites such as hospitals, airport hydrant systems that dispense jet fuel, and large field-constructed tank systems.

Summary of Proposed Rule Changes

(1) Two new contaminants[1] are being added to Table 1 in §11-280.1-65.3 and the action levels for five of the existing contaminants[2] in that table are being updated. The Tier 1 screening levels found in Table 1 are the default criteria for the remediation of contaminated soil and groundwater following a release from a UST system. Site-specific action levels may also be approved by the Department if they are deemed to be sufficiently protective of human health and the environment.

The Tier 1 screening levels in §11-280.1-65.3 are based on the Department's Environmental Action Levels (EALs), which are based on toxicological data (dangers of exposure to a specific chemical contaminant) and risk assessments considering potential pathways of human health and environmental exposure to contaminants. The proposed updates to the Tier 1 screening levels are based on recent updates to the Department's EALs, which are in turn based on new toxicological data and recent updates to the U.S. Environmental Protection Agency's toxicity factors and Regional Screening Levels.

(2) Clarifying, non-substantive changes are being made to §11-280.1-41(b)(5)(A), which pertains to release detection methods for piping for certain UST systems. These changes

[1] 1-methylnaphthalene and 2-methylnaphthalene.

[2] Cis 1,2-dichloroethylene, trans 1,2-dichloroethylene, and three ranges of total petroleum hydrocarbons (TPH): TPH-gasolines, TPH-middle distillates, and TPH-residual fuels.

more closely align state regulatory language with the federal language on which it is based.[3]

(3) A typographical error in the spelling of a chemical name is being corrected in Table 1 in §11-280.1-65.3.

Analysis of Small Business Impact

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

All UST system owners and operators within the state must comply with these regulations. Approximately 57 small businesses are operating UST systems at approximately 63 sites statewide. In addition, 28 of these 63 sites and a further thirteen (13) non-operational small business-owned or operated sites are in the process of cleaning up past releases of petroleum from UST systems. The small businesses that own or operate these 76 sites may be affected.

The average size of a tank at the operating sites is 5,000 to 10,000 gallons and most sites (approximately 82%) have two or three tanks. The remaining few sites have one, four, or five tanks. Of the non-operational cleanup sites, eight have had all tanks removed and the remaining five sites have between three and six tanks.

If the proposed amendments are adopted, the level of contamination triggering remediation when a UST system has a release is lowered for four contaminants and newly imposed for two contaminants.[4] This could require more expensive testing and additional monitoring and cleanup. The Department believes increased costs to small businesses are unlikely and, in most cases, should be covered by required financial assurance mechanisms.

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.

These proposed rule changes will lead to increased indirect costs (mainly professional services) only if there is a release from the UST system. Most sites are not expected to have a release, particularly with the upgrade to double walled USTs that is required to be completed at all sites by July 15, 2028. Only about seventeen (17) operating small business UST sites have remaining tanks that are not double walled. Double walled tank systems, combined with the release

[3] Hawaii is an approved state for the U.S. Environmental Protection Agency's national UST program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle I. Chapter 11-280.1, HAR, is based on Code of Federal Regulations (CFR) Title 40 Part 280 (40 CFR 280). §11-280.1-41(b)(5)(A), HAR, corresponds to 40 CFR §§280.41(b)(1)(i) and 280.252(d)(2).

[4] Screening levels are lowered for trans 1,2-dichloroethylene and three ranges of total petroleum hydrocarbons (TPH): TPH-gasolines, TPH-middle distillates, and TPH-residual fuels. New screening levels are added for 1-methylnaphthalene and 2-methylnaphthalene. Screening levels are increased for cis 1,2-dichloroethylene; this increase will not affect small businesses.

detection monitoring already required in the regulations, reduce the likelihood of releases significantly.

Where there is a release, in most cases the Department does not expect the proposed regulatory changes to lead to any additional cost for small businesses. Where the release is determined not to threaten human health and the environment, site-specific action levels that are less conservative than the default Tier 1 screening levels may be approved by the Department. If the screening levels in Table 1 apply and levels of contaminants exceed the new or lowered screening levels, the site owner and operator would likely need to install two to three additional monitoring wells to delineate the extent of the contamination, at a one-time cost of approximately $40,000 to $75,000. Monitoring for these additional wells would cost an estimated $8,000 to $18,000. The total increased cost for this situation is therefore estimated to be a total of $48,000 to $93,000. The increased cost to sites undergoing cleanup from a past release, if applicable, is estimated to be $5,000 per year.

It is impossible to estimate the potential increased costs for all scenarios, particularly if additional site cleanup is required. However, the regulations require owners and operators to have a financial assurance mechanism (such as a letter of credit, surety bond, or trust fund) in place to cover costs associated with UST releases,[5] which should cover these increased costs if they are incurred.

Questions 2a through 2d are not applicable.

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

None.

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

Not applicable. The cleanup levels are based on toxicological data (dangers of exposure to a specific chemical contaminant) and risk assessments considering potential pathways of human health and environmental exposure to contaminants. Cleanup performance standards must be consistent statewide to ensure the safety of human health and the environment, so the Department has not considered ways to reduce impacts to small businesses.

[5] See §11-280.1-93, HAR. Owners and operators must have financial assurance for a minimum of $500,000 per release and $1,000,000 annual aggregate. Some UST sites require additional financial assurance based on operations.

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

Not applicable. See #4.

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

Not applicable. See #4. Businesses possibly indirectly affected are discussed in #1.

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

The proposed rule change is based on revisions to the Hazard Evaluation and Emergency Response (HEER) Office's Environmental Action Levels (EALs). Small businesses had an opportunity to comment on the revisions to the HEER Office's EALs from April 1 to May 1, 2024. They will also have an opportunity to comment at the public hearing and during the public comment period for the proposed rule.

Question 7a is not applicable.

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

The proposed requirements do not have a direct counterpart in the federal underground storage tank regulations.

Questions 8a through 8e are not applicable.

RECEIVED
By SBRRB at 10:35 am, May 28, 2024

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-280.1
Hawaii Administrative Rules

ADOPTION DATE

1. Chapter 11-280.1, Hawaii Administrative Rules, entitled "Underground Storage Tanks", is amended and compiled 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

§§11-280.1-1 to 11-280.1-9 (Reserved)
§11-280.1-10 Applicability
§11-280.1-11 Installation requirements for partially excluded UST systems
§11-280.1-12 Definitions
§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice
§§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
§11-280.1-21 Upgrading of UST systems
§11-280.1-22 (Reserved)
§11-280.1-23 Tank and piping design for hazardous substance UST systems
§11-280.1-24 Secondary containment design
§11-280.1-25 Under-dispenser containment
§11-280.1-26 Performance standards and design for UST systems--codes of practice
§§11-280.1-27 to 11-280.1-29 (Reserved)

Subchapter 3 General Operating Requirements

§11-280.1-30 Spill and overfill control
§11-280.1-31 Operation and maintenance of corrosion protection
§11-280.1-32 Compatibility
§11-280.1-33 Repairs allowed
§11-280.1-34 Notification, reporting, and recordkeeping
§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
§11-280.1-36 Periodic operation and maintenance walkthrough inspections
§11-280.1-37 Periodic inspection and maintenance of under-dispenser containment
§11-280.1-38 General operating requirements--codes of practice
§11-280.1-39 (Reserved)

Subchapter 4 Release Detection

§11-280.1-40 General requirements for all UST systems

§11-280.1-41 Requirements for petroleum UST systems
§11-280.1-42 Requirements for hazardous substance UST systems
§11-280.1-43 Methods of release detection for tanks
§11-280.1-44 Methods of release detection for piping
§11-280.1-45 Release detection recordkeeping
§11-280.1-46 Release detection--codes of practice
§§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
§11-280.1-51 Investigation of off-site impacts
§11-280.1-52 Release investigation and confirmation steps
§11-280.1-53 Reporting and cleanup of spills and overfills
§§11-280.1-54 to 11-280.1-59 (Reserved)

Subchapter 6 Release Response Action

§11-280.1-60 General
§11-280.1-61 Immediate response actions
§11-280.1-61.1 Posting of signs
§11-280.1-62 Initial abatement measures and site assessment
§11-280.1-63 Initial site characterization
§11-280.1-64 Free product removal
§11-280.1-65 Investigations for soil and groundwater cleanup
§11-280.1-65.1 Notification of confirmed releases
§11-280.1-65.2 Release response reporting
§11-280.1-65.3 Site cleanup criteria
§11-280.1-66 Corrective action plan
§11-280.1-67 Public participation for corrective action plans
§§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
§11-280.1-71 Permanent closure and changes-in-service
§11-280.1-72 Assessing the site at closure or change-in-service
§11-280.1-73 Applicability to previously closed UST systems
§11-280.1-74 Closure records
§11-280.1-75 Closure--codes of practice
§§11-280.1-76 to 11-280.1-89 (Reserved)

Subchapter 8 Financial Responsibility

§11-280.1-90 Applicability
§11-280.1-91 (Reserved)
§11-280.1-92 Definition of terms
§11-280.1-93 Amount and scope of required financial responsibility
§11-280.1-94 Allowable mechanisms and combinations of mechanisms
§11-280.1-95 Financial test of self-insurance
§11-280.1-96 Guarantee
§11-280.1-97 Insurance and risk retention group coverage
§11-280.1-98 Surety bond
§11-280.1-99 Letter of credit
§§11-280.1-100 to 11-280.1-101 (Reserved)
§11-280.1-102 Trust fund
§11-280.1-103 Standby trust fund
§11-280.1-104 Local government bond rating test
§11-280.1-105 Local government financial test
§11-280.1-106 Local government guarantee
§11-280.1-107 Local government fund
§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator
§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance
§11-280.1-110 Reporting by owner or operator

§11-280.1-111 Recordkeeping
§11-280.1-112 Drawing on financial assurance mechanisms
§11-280.1-113 Release from the requirements
§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance
§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds
§§11-280.1-116 to 11-280.1-199 (Reserved)

Subchapter 9 Lender Liability

§11-280.1-200 Definitions
§§11-280.1-201 to 11-280.1-209 (Reserved)
§11-280.1-210 Participation in management
§§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
§§11-280.1-221 to 11-280.1-229 (Reserved)
§11-280.1-230 Operating an underground storage tank or underground storage tank system
§§11-280.1-231 to 11-280.1-239 (Reserved)

Subchapter 10 Operator Training

§11-280.1-240 General requirement for all UST systems
§11-280.1-241 Designation of Class A, B, and C operators
§11-280.1-242 Requirements for operator training
§11-280.1-243 Timing of operator training
§11-280.1-244 Retraining
§11-280.1-245 Documentation
§§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
§11-280.1-324 Application for a permit
§11-280.1-325 Permit
§11-280.1-326 Permit renewals
§11-280.1-327 Action on complete permit application
§11-280.1-328 Permit conditions
§11-280.1-329 Modification of permit
§11-280.1-330 Revocation or suspension of permit
§11-280.1-331 Change in owner or operator for a permit
§11-280.1-332 Variances allowed
§11-280.1-333 Variance applications
§11-280.1-334 Maintenance of permit or variance
§11-280.1-335 Fees
§§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
§11-280.1-422 Field citations
§§11-280.1-423 to 11-280.1-428 (Reserved)
§11-280.1-429 Delivery, deposit, and acceptance prohibition

Historical note: This chapter is based substantially upon chapter 11-281. [Eff 1/28/00; am and comp 8/09/13; R 7/15/18]

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 July 15, 2018 must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than July 15, 2019.

(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 July 15, 2019.

(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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 July 15, 2018 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 July 15, 2018.

(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 with a capacity greater than 50,000 gallons; and

(C) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 July 15, 2018:

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

(B) Not later than July 15, 2019, 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 July 15, 2028, 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 July 15, 2038, tanks and piping installed before July 15, 2018 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 with a capacity greater than 50,000 gallons; and

(3) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 July 15, 2018 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; and

(3) Meet one of the following requirements:

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

(B) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 documenting compliance with subsection (b) for as long as the UST

system is used to store the regulated substance. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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) Completed closure or change-in-service;

(2) Temporary closure or the return to currently-in-use status;
(3) Changes in product dispensing method, dispenser system, or under dispenser containment;
(4) Changes in financial responsibility mechanism;
(5) Changes in release 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) Intent to close notification. Owners and operators shall notify the department of planned permanent closure or change-in-service of an UST or tank system and scheduled excavation work for permanent closure or change-in-service by submitting the "Notice of Intent to Close Underground Storage Tanks" form prescribed by the director.

(c) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) and (b) 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.

(d) 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 for 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)).

(e) 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).

(f) 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.

(g) 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp

] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 July 15, 2019, 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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. (a) Under-dispenser containment that allows for visual inspection and access to the components in the containment system to meet the requirements of section 11-280.1-25 must be visually inspected for damage and have any liquid or debris removed every thirty-one days.

(b) Sensing devices for under-dispenser containment used to meet the requirements of 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); and

(2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

(c) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a) or (b). 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 July 15, 2019, 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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) Tanks that are neither part of an airport hydrant fuel distribution system nor a UST system 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 July 15, 2028, 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) Tanks that are part of an airport hydrant fuel distribution system or a UST system with field-constructed tanks, except field-constructed tanks with a capacity greater than 50,000 gallons:

(A) Tanks installed before July 15, 2018 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 July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

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

(A) Tanks installed before July 15, 2018 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).

(B) Tanks installed on or after July 15, 2018 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 July 15, 2028, 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 July 15, 2018 must meet the technical specifications in paragraph (1)(A) or (B).

(B) Not later than July 15, 2038, piping installed before July 15, 2018 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 July 15, 2018 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~~] have an annual line tightness test conducted in accordance with section 11-280.1-44(2) [~~or~~];

(ii) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1) and 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 7/15/18; comp 1/17/20; am and comp 7/8/21; am and comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp]

(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 July 15, 2021 (may use up to 6.0 gph leak rate).
Second test	Between July 15, 2021 and July 15, 2024 (may use up to 6.0 gph leak rate).
Third test	Between July 15, 2024 and July 15, 2025 (must use 3.0 gph for leak rate).
Subsequent tests	Not later than July 15, 2025 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 July 15, 2018 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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) and, 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 7/15/18; comp

1/17/20; am and comp 7/8/21; comp] (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 must immediately notify the department of 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 its reportable quantity, as determined in compliance with section 11-451-6, and comply with section 11-280.1-62(b) if cleanup cannot be accomplished within twenty-four hours.

(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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 accurately complete and submit to the department the "Confirmed Release Notification" form prescribed by the director.

(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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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, or within another reasonable period of time determined by the department, 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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~~] 1.8	VI	620	CAT	[~~0.36~~] 1.8	VI
Dichloroethylene, trans 1,2-	100	DWP	[~~3.6~~] 1.8	VI	560	CAT	[~~3.6~~] 1.8	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
Methylnaphthalene, 1-	2.1	CAT	0.89	L	2.1	CAT	0.89	L
Methylnaphthalene, 2-	4.7	CAT	1.9	L	4.7	CAT	1.9	L
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~~] Tetrachlorethylene (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~~] 74	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	[~~400~~] 91	DWP	[~~220~~] 180	DE	640	CAT	[~~220~~] 180	DE
TPH-residual fuels	[~~500~~] 91	[~~DWS~~] DWP	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 7/15/18; comp 1/17/20; comp 7/8/21; am and comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 of

their intent to permanently close or make the change-in-service, as required in section 11-280.1-34, 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, as required in section 11-280.1-34.

(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 to the department:

(1) A notification as required in section 11-280.1-34; and

(2) A UST closure report, including the results of the site assessment conducted in accordance with section 11-280.1-72. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21;

comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 located in the U.S.? [If "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 Commission, the federal Energy Information Administration, or the federal Rural Utilities Service?	Yes	No

[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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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)(1) 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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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, or section 11-280.1-34, the permit application submitted pursuant to section 11-280.1-324 or 11-280.1-326, and the certification of installation form submitted pursuant to section 11-280.1-325(d).

(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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 July 15, 2018 must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after July 15, 2018 must be trained before assuming duties of a Class C operator. [Eff 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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. At a minimum, the training must cover the area(s) determined to be out of compliance. 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 requirements, 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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) Description of tanks, piping, ancillary equipment, spill and overfill prevention equipment, and release detection equipment;

(4) Other information required in the form prescribed by the director; and

(5) 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 be 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-327 Action on complete permit application. (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. [Eff 7/15/18; am and comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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. An application to transfer a permit from one owner to another owner must be signed by both the current owner and the prospective new owner. An application 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 7/15/18; comp 1/17/20; am and comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (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;

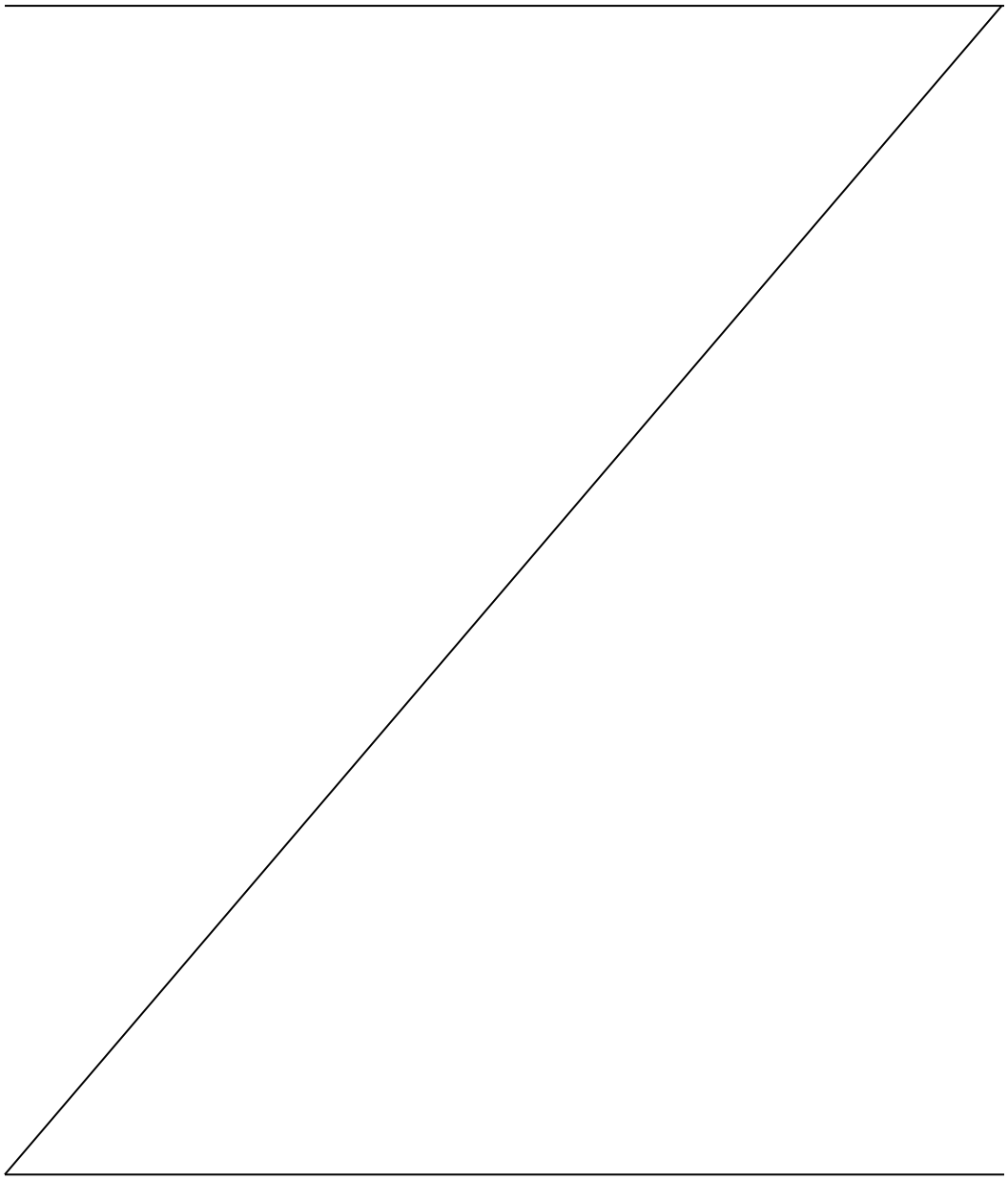
(6) Required corrosion protection equipment is not installed or properly functioning or maintained;

(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 7/15/18; comp 1/17/20; comp 7/8/21; comp] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)



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

3. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

4. These amendment to and compilation 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 ADOPTION DATE and filed with the Office of the Lieutenant Governor.

_____
Kenneth S. Fink, MD, MGA, MPH
Director of Health

APPROVED AS TO FORM:

_____
Wade H. Hargrove III
Deputy Attorney General

IV. New Business

E. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 13 Subtitle 14, Hawaii Invasive Species Council, Chapter 325, General Provisions and Chapter 326 Control and Eradication of Invasive Species, promulgated by DLNR

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

Date: 6/5/2024

Department or Agency: Department of Land & Natural Resources - Hawaii Invasive Specie

Administrative Rule Title and Chapter: Hawaii Invasive Species Council Subtitle 14, Ch. 13-3

Chapter Name: Ch. 13-325 General Provisions; Ch 13-326 Control and Eradication of Invasive Species

Contact Person/Title: Chelsea Arnott, Program Supervisor, Hawaii Invasive Species Coun

E-mail: chelsea.l.arnott@hawaii.gov Phone: 808-492-0642

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

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

☑ Yes ☐ No

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

I. Rule Description:

☑ New ☐ Repeal ☐ Amendment ☐ Compilation

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

☑ Yes ☐ No

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

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

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

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

☐ Yes ☑ No

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

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

☐ Yes ☑ No

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

* * *

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

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

   The rules allow Hawaii Invasive Species Council (HISC) departments, a county, or an agent to access private property, after notice, for control or eradication of an invasive species identified by the Council. This could include small businesses that are known or reasonably suspected, based on surveys, reports, or proximity to known infestations, to have an identified invasive species on their property.

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.

   The rules do not have fines or fees. A property owner that intentionally and knowingly establishes an identified invasive species on their property could be ordered to control it. Otherwise, the control/eradication is free of charge.

   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.

      NA

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

      NA

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

      NA

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

      NA

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.

   NA

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 are no reporting requirements, fines, or design standards in the proposed rules. Please see Attachment A for a full description of the proposed rule language.

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

   The invasive species identified by HISC for control or eradication in the rules are the highest impact invasive species that are continuing to spread within the State or that would require an immediate response if found in the State. A detailed description of each species selected is found in attachment A under "Discussion and Analysis."

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

   The intent of the proposed rules is to carry out chapter 194 HRS to allow HISC departments, a county, or an agent to effectively control/eradicate the highest impact invasive species in the State. This will ultimately benefit a business that could experience substantial losses from the presence of an identified invasive species on their property.

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

   The rules were approved by the Hawaii Invasive Species Council at a noticed, public meeting on May 29, 2024. We hope to receive comments from small businesses through the public meeting process.

   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 testimony from small businesses was received at the HISC meeting on May 29, 2024.

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.

   N/A The proposed rules contain the initial list of the invasive species identified by HISC for control or eradication. Please see Attachment A "Summary of Rules" section for a full description of the proposed rule language.

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

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

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

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

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

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

* * *

RECEIVED
By SBRRB at 8:27 am, Jun 05, 2024

ATTACHMENT A

June 5, 2024

The Hawaii Invasive Species Council (HISC) is proposing to adopt a new subtitle as Hawaii Administrative Rules Title 13, Subtitle 14, to effectuate chapter 194, Hawaii Revised Statutes (HRS). The HISC approved the submittal to initiate rulemaking under Chapter 91, HRS at the May 29, 2024, public meeting and delegate authority to the Chairperson of the Department of Land and Natural Resources (DLNR) to appoint a hearing master and designate dates and times for the public hearing(s). HRS § 194-7 HRS authorizes HISC to adopt rules pursuant to chapter 91, HRS.

HISC has not previously adopted any administrative rules.

Discussion and Analysis

Need for rules. HISC has not adopted any administrative rules to carry out chapter 194, HRS. The authorities contained in chapter 194 are intended for the HISC departments, the counties, and their agents to carry out control or eradication actions on private property if an invasive species identified by HISC is: (1) found on private property; or (2) reasonably suspected to be on private property, based on the results of systematic surveys or reports or proximity to known populations. HRS § 194-5. Chapter 194 HRS further authorizes HISC departments and their agents to order the control or eradication of invasive species on public property. HRS § 194-6. Until administrative rules with procedures are properly adopted, these statutory authorities cannot be effectuated.

The species listed as invasive species identified by HISC for control or eradication are the highest impact invasive species that are continuing to spread within the State or that would require an immediate response if found in the State. A description of each species selected is as follows:

Plants:

Scientific name	Common name	Summary of Impacts
Cenchrus longisetus (formerly *Pennisetum villosum)*	feather-topped fountain grass; longstyle feather grass	Feathertop is another perennial, clumping grass that is grown in gardens with a similar growth structure and leaves to fountain grass. It is an early detection target pest of the Kauai Invasive Species Committee.
Cenchrus setaceus (formerly *Pennisetum setaceum*)	fountain grass	Fountain grass is a perennial, clumping grass that can grow in a variety of habitats, from bare lava, to rangeland, to urban roadsides in drier areas of the Hawaiian Islands. Fountain grass is an aggressive habitat-invader. It degrades the quality of pasture lands, particularly in drier areas. It is fire-adapted and can sustain fires that spread quickly into

		adjacent areas. Its dried biomass can increase the intensity of wildfires. It is listed as a State Noxious Weed under chapter 68 HAR. Fountain grass is a target pest of all the ISCs except for Molokai.
Chromolaena odorata	devil weed, Siam weed	Devil weed, siam weed, or bitter bush, is one of the most notorious tropical weeds in the world. Emerging as a shrub that quickly forms dense thickets, it can thrive in all environments except deep shade, flourishing in newly disturbed areas. It is listed as a State Noxious Weed under chapter 68 HAR and is a target pest of the Oahu Invasive Species Committee and Big Island Invasive Species Committee.
Cortaderia jubata	pampas grass	Pampas grass grows rapidly, produces thousands of seeds per flower plume, and can accumulate large amounts of fire prone biomass. Seeds are viable for 4-6 months, but field evidence from Hawaii suggests viability could be greater. It can crowd out native species, impede access, degrade grazing lands, and create fire hazards. It is listed as a State Noxious Weed under chapter 68 HAR. Pampas grass is a target pest of all the ISCs except for Molokai.
Cortaderia selloana	pampas grass	Pampas grass grows rapidly and can accumulate large amounts of fire prone biomass. It can crowd out native species, impede access, degrade grazing lands, and create fire hazards. It is difficult to distinguish from other *Cortaderia* species and may hybridize with them.
Miconia – all species in the genus	miconia	Miconia is one of the top threats to Hawaii's watersheds and forest ecosystems. The fast-growing tree in the melastome family invades areas from agricultural landscapes to forests by forming dense stands and shading out other native forest trees with its large leaves. Its uncontrolled growth can overwhelm highly diverse native wet forest ecosystems that are home to critically endangered species and essential as sources of fresh water. Each plant can produce approximately ten million seeds per year, which may remain viable for more than 20 years. It is listed as a State Noxious

		Weed under chapter 68 HAR. It is a target of the ISCs except Molokai.
Senecio madagascariensis	fireweed	Fireweed invades pastures, disturbed areas, and roadsides. It is very toxic to cattle, horses and other livestock. When ingested it causes illness, slow overall growth, liver-malfunction and even death in severe cases. In Australia, fireweed costs over $2 million per year in losses and control. It is listed as a State Noxious Weed under chapter 68 HAR. It is a target of the Kauai Invasive Species Committee, Oahu Invasive Species Committee, and Molokai Invasive Species Committee.
Tibouchina - all species in the genus; *Andesanthus* – all species in the genus; *Chaetogastra* – all species in the genus; *Pleroma* – all species in the genus	Tibouchina, glory bush	Tibouchina threatens native areas by forming monotypic thickets that outcompete and displace native plants. Each of the four genera listed were formerly considered under the genus *Tibouchina* and are still designated as State Noxious Weeds under chapter 68 HAR. Tibouchina and the list three listed genera are target pests of the Oahu Invasive Species Committee.

Invertebrates:

Scientific name	Common name	Summary of Impacts
Aedes aegypti	mosquito	*Aedes aegypti* is a serious human health risk. It is the known vector of several viruses including yellow fever virus, dengue virus chikungunya virus and Zika virus. It has limited distribution in the State and populations are monitored by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.
Aedes scutellaris	mosquito	*Aedes scutellaris* is a mosquito that can transmit dengue viruses. It is a semi-domesticated container breeding mosquito that is also considered a bush mosquito. Monitoring for this species is conducted by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.

Apis mellifera scutellata	Africanized honeybee	Africanized Honeybees (AHB) are a "wild" bee that is not comfortable around people or animals and will readily defend its hive at greater distances from the disturbance, become more upset with less reason, and sting in much greater numbers. If it were to become established in Hawaii, it would be difficult to control, it could seriously impact Hawaii's communities, businesses, and tourism. AHB could also impact commercial beekeepers, resulting in reduced yields to crops that rely on pollination. It could also impact honey and queen bee production in the State by infiltrating domestic honey bee colonies. Africanized honeybees are considered injurious wildlife under chapter 124 HAR.
Anopheles - all species in genus	western malaria mosquito	Anopheles mosquitos can transmit malaria. They are not known to be present in Hawaii. Monitoring for this species is conducted by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.
Oryctes rhinoceros	coconut rhinoceros beetle, CRB	CRB a pest of palms across the Pacific including Hawaii and have a wider host range that includes Pandanus and banana. Adults bite and bore into emerging palm fronds creating holes in the top of the tree that can eventually kill it. CRB is a target pest of the Kauai Invasive Species Committee, Maui Invasive Species Committee, Big Island Invasive Species Committee, and is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).
Popillia japonica	Japanese beetle	Japanese beetle feeds on a wide range of plants. The adult beetles skeletonize leaves by eating around the larger veins and chew on flowers. Hosts include small fruits, tree fruits, truck and garden crops, ornamental shrubs, vines, and trees. Feeding studies show a host range more than 300 plants in 79 plant families. It is monitored for by the Interagency Port of Entry Monitoring Program coordinated under the HISC.

Prosapia bicincta	two-lined spittlebug	The two-lined spittlebug (TLSB) feeds on grasses that are important to ranching and results in the loss of thousands of acres of kikuyu and pangola grass pastures. Pastures do not recover after infestation but instead are replaced by invasive plants that are challenging to control. The TLSB is a serious threat to the ranching industry in Hawaii, where most of our livestock depend on the grasses attacked by the insect. TLSB is a target pest of the Big Island Invasive Species Committee.
Solenopsis invicta	red imported fire ant, RIFA	RIFA pose a serious threat to human health. Large numbers of ants will rapidly swarm on and relentlessly sting anything unfortunate enough to disturb them. In the U.S., millions of people are stung each year. RIFA stings cause blisters filled with white pus which lasts for several days. In infested areas, they may cause injury or death to livestock, pets, and wildlife; damage crops, ornamental plants, electrical equipment, and irrigation systems; and cause serious declines in biodiversity. RIFA is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR). It is also monitored for through the Interagency Port of Entry Monitoring Program coordinated under the HISC.
Wasmannia auropunctata	little fire ant, LFA	LFA delivers a painful sting when disturbed. Welts can last for weeks. Infests agricultural fields and farms, where they damage crops and sting workers. Promotes plant pests such as aphids, white flies and scale insects, which secrete plant sap that the ants eat. They may sting, and even blind, pets such as cats and dogs. In the Galapagos, they eat tortoise hatchlings and attacks the eyes of adult tortoises. LFA is a target pest of the Kauai Invasive Species Committee, Oahu Invasive Species Committee, Hawaii Ant Lab, Maui Invasive Species Committee, and is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by

		DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).

Vertebrates:

Scientific name	Common name	Summary of Impacts
Eleutherodactylus coqui	coqui frog	The coqui frog has no natural predators or competitors in Hawaii to keep populations in check. Populations have reached 55,000 frogs per hectare in some Hawaii populations (compared to 24,000 frogs per hectare in their native habitat, Puerto Rico). They eat huge quantities of insects, removing insects from forest floor to treetops. This results in the loss of insect services, such as pollination. The male calls are loud and incessant that can bother residents and visitors alike. Coqui are currently a rapid response species for HDOA and the Island Invasive Species Committees (ISCs) except for Hawaii Island. Coqui is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).

Pathogens/Diseases:

Scientific name	Common name	Summary of Impacts
Ceratocystis lukuohia	rapid ohia death	The two fungal pathogens attack and can quickly kill ohia trees (*Metrosideros polymorpha*). Ohia is endemic to Hawaii and comprises approximately 80% of Hawaii's native forests. *Note: the species of *Ceratocystis* fungi that cause Rapid Ohia Death has since been recognized as two distinct species; ***Ceratocystis huliohia*** (ROD canker disease) and ***C. lukuohia*** (ROD wilt disease), with significantly different pathologies – although both ultimately lead to tree mortality. There is a State quarantine preventing the movement of Ohia products from Hawaii Island and Kauai. The US Department of Agriculture implemented the Myrtaceae Rule that restricts the movement of
Ceratocystis huliohia	rapid ohia death	

		myrtle plants from entering Hawaii through foriegn ports.

The adoption of administrative rules to effectuate the authorities for HISC departments, and counties and agents where applicable, to control and eradicate species identified by HISC or order their control or eradication will provide the opportunity to effectively manage these invasive species on a local, island, or State-wide basis.

Summary of Proposed Rules

The text of the proposed rules, to be found in chapters 325 and 326 of subtitle 14 to title 13, HAR, is provided as **Exhibit 1** of this submittal. **Exhibit 2** provides the text of HRS §§ 194-5 and 194-6 for reference. A summary of the proposed rules is as follows:

Chapter 325 contains 3 sections that set out the general provisions as follows:

- **Section 325-1 "Purpose"** sets out that the purpose of the rules is to implement HISC authorities under chapter 194 HRS.

- **Section 325-2 "Definitions"** sets out the definitions for the subtitle for the terms "agent," "control," "Council" or "Hawaii Invasive Species Council," "county," "department," "eradicate," "eradication," "invasive species," "non-native species," "person," and "public property."

- **Section 325-3 "Relationship to other laws"** clarifies that the HISC administrative rules may not be construed to limit existing authorities provided to a HISC department or a county under any law or any other rule.

Chapter 326 contains 6 sections that are related to the authority of HISC departments, the counties, and their agents to carry out actions to control or eradicate invasive species identified by the HISC, as follows:

- **Section 326-1 "Invasive species identified by the council for control or eradication"** sets out the list of invasive species identified by HISC for control or eradication (identified species).
  - The list contains invasive species taxa that are either: (1) currently causing substantial negative impacts in the State and that could still be controlled or eradicated over a large geographic area; or (2) not currently present in the State and would cause such impacts if not controlled or eradicated if detected in Hawaii.
  - A detailed description of each species is provided under heading "Discussion and Analysis" above.
  - This section carries out the statutory requirement that control or eradication actions on private property may only be carried out for "invasive species identified by the [HISC] for control or eradication." HRS § 194-5.

- **Section 326-2 "Requirements for control or eradication on private property"** sets out

the requirements for a HISC department or country or an agent to control or eradicate an identified species on private property that is found, or reasonably suspected based on the results of systematic surveys or reports or proximity to know populations, on the private property. This section provides guidance to HISC departments and counties for carrying out HRS § 194-5, as follows:

- The department or county must submit a detailed control or eradication program to HISC. The program must be narrowly tailored to control or eradicate the target invasive species, identify the specific geographic area where the control or eradication actions will be carried out, include a proposed schedule of the actions, describe the methods proposed to be used, and include an assessment of the reasonableness of those methods.
- The section requires the HISC department or county to provide updates to HISC on the control or eradication actions at least annually.
- Subsection (b) requires that if two departments or counties intend to carry out control or eradication actions for the same identified species, those departments and counties shall ensure the actions are carried out efficiently and in a manner that does not result in unnecessary impacts to land owners, tenants, or occupants.
- Subsection (c) authorizes a HISC department or a county to enter into a memorandum of understanding (MOU) with an agent that has appropriate expertise and experience to carry out actions under this section or sections 326-3 or 326-4 (see below).

- **Section 326-3 "Notice"** sets out the requirements for notice to a private property owner, or tenant or occupant if applicable, before control or eradication actions may be carried out on the private property. This section provides guidance on what is "reasonable notice" as required by HRS § 194-5.
  - If the owner, and tenant or occupant if applicable, consent to the control or eradications actions, the actions may be carried out immediately.
  - If the owner, and tenant or occupant if applicable, does not consent, the action may be carried out 30 days after notice is given if a court issues a warrant authorizing the actions under section 326-6 (see below).
  - Subsection (c) authorizes a HISC department or county or their agent to waive the 30 day notice requirements if the department or county determines that control or eradication of the identified species requires an urgent response on private property and the consent of the owner, or tenant or occupant if applicable, cannot be obtained immediately and the department or county obtains a warrant under section 326-6 (see below) that authorizes the entry onto the private property for emergency control or eradication actions.

- **Section 326-4 "Requirement for control or eradication by private property owner"** authorizes a HISC department or county or their agent to order a private property owner to control or eradicate an identified species if the department or county or their agent determines the identified species was "intentionally and knowingly" established on private property by the property owner. This section provides guidance to HISC departments and counties to effectuate HRS § 194-5(c).
  - The property owner must be given 30 days notice and a reasonable amount of time to obtain needed equipment, supplies, and personnel to comply with the order.

- Subsection (c) provides that if the owner fails to comply with the order, the HISC department or county or agent may, after notice, carry out the actions at the property owner's if the owner consents or pursuant to a warrant sought under section 326-6 (see below).
- Subsection (d) provides that the HISC department, county, or agent may seek to recover its expenses for carrying out the actions under subsection (c) at an appropriate proceeding.

- **Section 326-5 "Requirements for control or eradication on public property"** sets out the requirements for a HISC department or its agent to order an entity in charge of State or county property to control or eradicate an identified species on the public property. This section provides limitations on the authority provided in HRS § 194-6.
  - HRS § 194-6 authorizes a HISC department or its agent to order the entity in charge of <u>any</u> State or country property to control or eradicate <u>any</u> invasive species.
  - The proposed rules limit this authority by authorizing a HISC department (or agent operating under an MOU) to order the entity in charge of the public property to control or eradicate: (1) <u>only</u> an invasive species identified by HISC for control or eradication; and (2) <u>only if</u> the public property is located within a geographic area in which the HISC department or its agent is monitoring or carrying out control or eradication actions for that identified species.
  - Subsection (b) requires that the entity in charge of the public property be given 30 days notice and a reasonable amount of time to obtain needed equipment, supplies, and personnel to comply with the order.
  - Subsection (c) provides that if the entity in charge of the public property fails to comply with the order, the HISC department or its agent may, after notice, carry out the actions if the owner consents or pursuant to a warrant sought under section 326-6 (see below).
  - Subsection (d) provides that the HISC department or its agent may seek to recover its expenses for carrying out the actions under subsection (c) at an appropriate proceeding.
  - Subsection (e) authorizes a HISC department or its agent to waive the 30 day notice requirement if: (1) the HISC department or agent determines that control or eradication of the identified species requires an urgent response on the public property; (2) consent of the entity in charge cannot be obtained immediately; and (3) the HISC department obtains a warrant under section 326-6 (see below) that authorizes the entry onto the public property for emergency control or eradication actions.
  - Subsection (f) authorizes a HISC department to enter into a MOU with an agent that has appropriate expertise and experience to carry out actions under this section.

- **Section 326-6 "Warrants"** sets out the requirements for a HISC department or county to seek a warrant to carry out a control or eradication action on private or public property without the consent of the property owner, tenant, occupier, or entity in charge, as appropriate. The section requires an affidavit be submitted to the district court of the circuit in which the private or public property is situated.

RECEIVED
By SBRRB at 8:26 am, Jun 05, 2024

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Subtitle 14 of Title 13,
Containing Chapters 13-325 and 13-326,
Hawaii Administrative Rules

[DATE]

1. Chapter 13-325, Hawaii Administrative Rules, is adopted.

2. Chapter 13-326, Hawaii Administrative Rules, is adopted.

3. Subtitle 14 of Title 13, Hawaii Administrative Rules, is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 13-325

GENERAL PROVISIONS

§13-325-1 Purpose
§13-325-2 Definitions
§13-325-3 Relationship to other laws

§13-325-1 Purpose. This chapter implements the Hawaii invasive species council authorities in chapter 194,

Hawaii Revised Statutes, for the purpose of preventing, controlling, and eradicating harmful invasive species infestations throughout the State.
[Eff] (Auth: HRS §194-7) (Imp: HRS §§194-2, 194-4)

§13-325-2 Definitions. As used in this chapter:

"Agent" means a person authorized by law to carry out a provision of this chapter.

"Control" means, with respect to an invasive species, containing, suppressing, or reducing the invasive species.

"Council" or "Hawaii invasive species council" means the invasive species council established under section 194-2, Hawaii Revised Statutes.

"County" means the city and county of Honolulu, and the county of Hawaii, the county of Kauai, and the county of Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this chapter.

"Department" means each of the following:

(1) The department of agriculture;
(2) The department of business, economic development, and tourism;
(3) The department of health;
(4) The department of land and natural resources;
(5) The department of transportation; and
(6) The University of Hawaii.

"Eradicate" means, with respect to an invasive species, to remove or destroy an entire population of the invasive species.

"Eradication" means, with respect to an invasive species, actions to eradicate the invasive species.

"Invasive species" means, with regard to a particular ecosystem, a non-native species, genera, or other taxon that causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

"Non-native species" means, with respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

"Person" means an individual, corporation, firm, association, partnership, or other public, private, or not-for-profit entity, or any governmental unit.

"Public property" means any property owned or controlled by the State or a county.

[Eff] (Auth: HRS §194-7) (Imp: HRS §§194-1, 194-2)

§13-325-3 Relationship to other laws. Nothing in this chapter may be construed to limit an authority provided to a department or a county under any provision of law or any other rule to regulate, control, or eradicate any invasive species. [Eff] (Auth: HRS §194-7) (Imp: HRS §194-4)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 13-326

CONTROL AND ERADICATION OF INVASIVE SPECIES

§13-326-1 Invasive species identified by the council for control or eradication
§13-326-2 Requirements for control or eradication on private property
§13-326-3 Notice
§13-326-4 Requirement for control or eradication by private property owner
§13-326-5 Requirements for control or eradication on public property
§13-326-6 Warrants

§13-326-1 Invasive species identified by the council for control or eradication. (a) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are those invasive species that have a record of causing economic or environmental harm, or harm to human, animal, or plant health in the scientific literature or in environmental conditions found in Hawaii.

(b) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are the following:

	Scientific name	Common name
(1)	Plants:	
(A)	*Andesanthus* – all species in the genus	
(B)	*Cenchrus longisetus (formerly Pennisetum villosum)*	feather-topped fountain grass, longstyle feather grass
(C)	*Cenchrus setaceus (formerly Pennisetum setaceum*)	fountain grass
(D)	*Chaetogastra* – all species in the genus	
(E)	*Chromolaena odorata*	devil weed, Siam weed
(F)	*Cortaderia jubata*	pampas grass
(G)	*Cortaderia selloana*	pampas grass
(H)	*Miconia* – all species in the genus	miconia
(I)	*Pleroma* – all species in the genus	
(J)	*Senecio madagascariensis*	fireweed
(K)	*Tibouchina* – all species in the genus	Tibouchina, glory bush
(2)	Invertebrates:	
(A)	*Aedes aegypti*	mosquito
(B)	*Aedes scutellaris*	mosquito
(C)	*Apis mellifera scutellata*	Africanized honeybee
(D)	*Anopheles* - all species in genus	western malaria mosquito
(E)	*Oryctes rhinoceros*	coconut rhinoceros beetle, CRB
(F)	*Popillia japonica*	Japanese beetle
(G)	*Prosapia bicincta*	two-lined spittlebug
(H)	*Solenopsis invicta*	red imported fire ant, RIFA

(I)	*Wasmannia auropunctata*	little fire ant, LFA

(3) Vertebrates:

(A)	*Eleutherodactylus coqui*	coqui frog

(4) Pathogens:

(A)	*Ceratocystis lukuohia*	rapid ohia death
(B)	*Ceratocystis huliohia*	rapid ohia death

(c) If the scientific name or common name of a taxon referred to in this section is changed to a new scientific name or common name accepted by the International Code of Zoological Nomenclature (ICZN), the International Plant Names Index (IPNI), or other appropriate authority the reference in this section shall be construed to refer to the new scientific name or common name, as appropriate. [Eff] (Auth: HRS §194-7) (Imp: HRS §194-4)

§13-326-2 Requirements for control or eradication on private property. (a) A department or county seeking to conduct control or eradication actions on private property pursuant to this chapter for an invasive species listed in section 13-326-1(b) shall:

(1) Prior to conducting any such action, develop and submit to the council a detailed control or eradication program that:

(A) Is narrowly tailored to include only the needed control or eradication of the target invasive species, recognizing that general vegetation removal, other removal or modification of non-target species, and other habitat modification may be needed for access to or control or eradication of the target invasive species;

(B) Identifies the specific geographic areas where control or eradication actions will be carried out and the reasons each area is selected, including that the target invasive species is known or reasonably suspected to be in each area, based on the

results of systematic surveys or reports or proximity to known infestations of the invasive species;

(C) Includes a proposed schedule for the actions;

(D) Describes the control or eradication methods proposed to be used; and

(E) Includes an assessment of the reasonableness of the methods proposed; and

(2) Provide regular updates, not less than annually, to the council on the control or eradication actions carried out by the department or county.

(b) If two or more departments or counties intend to carry out control or eradication actions pursuant to this chapter for the same invasive species, those departments and counties shall ensure that all control or eradication actions are carried out efficiently and in a manner that does not result in unnecessary impacts to land owners, or tenants or occupants, if applicable.

(c) A department or county may enter into a memorandum of understanding with an agent of the department or county that has appropriate expertise and experience to carry out actions under this section or section 13-326-3 or 13-326-4. [Eff] (Auth: HRS §194-7) (Imp: HRS §§194-4, 194-5)

§13-326-3 Notice. (a) The time period for reasonable notice to the owner, and tenant or occupant if applicable, of private property that a department or county intends to enter to control or eradicate an invasive species pursuant to section 194-5, Hawaii Revised Statutes, is the earlier of:

(1) Thirty days after notice is given to the owner, and the tenant or occupant if applicable; or

(2) The date that the owner, and the tenant or occupant if applicable, consents to the entry.

(b) If the owner, or the tenant or occupant if applicable, of the private property does not consent to the entry by a department or a county within thirty days after notice is given under subsection (a), the department or county may seek a warrant under section 13-326-6 that authorizes the entry for control or eradication actions.

(c) Notwithstanding subsections (a) and (b), if a department or county determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on private property and the consent of the owner, or tenant or occupant if applicable, cannot be obtained immediately, the department or county may seek a warrant under section 13-326-6 that authorizes the entry onto the private property for emergency control or eradication actions. [Eff] (Auth: HRS §194-7) (Imp: HRS §194-5)

§13-326-4 Requirement for control or eradication by private property owner. (a) If a department or county determines that an invasive species listed in section 13-326-1(b) was intentionally and knowingly established on private property by the property owner, the department or county may order the property owner to control or eradicate the invasive species to the satisfaction of the department or county.

(b) The time limit set by a department or county to require an owner of private property to control or eradicate an invasive species pursuant to section 194-5(c), Hawaii Revised Statutes, shall be not less than thirty days and shall provide a reasonable amount of time for the owner to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

(c) If the owner fails to comply with an order issued under subsection (a), the applicable department or county may after notice required by section 13-326-3 carry out the actions required by the order:

(1) If the owner consents to the department or county carrying out the actions; or

(2) Pursuant to a warrant sought under section 13-326-6.

(d) A department or county that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding. [Eff] (Auth: HRS §194-7) (Imp: HRS §194-5)

§13-326-5 Requirements for control or eradication on public property. (a) If a department determines that an invasive species listed in section 13-326-1(b) is found on public property that is within a geographic area in which the department or its agent is carrying out monitoring or control or eradication actions for the invasive species, the department may, after notice required by subsection (b), order the government entity in charge of the public property to control or eradicate the invasive species to the satisfaction of the department.

(b) The notice required by this subsection shall be not less than thirty days and shall provide a reasonable amount of time for the government entity in charge of the public property to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

(c) If the government entity in charge of the public property fails to comply with an order issued under subsection (a), the applicable department may carry out the control or eradication actions required by the order:

(1) If the government entity in charge of the public property consents to the department carrying out the actions; or

(2) Pursuant to a warrant sought under section 13-326-6.

(d) A department that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding.

(e) Notwithstanding subsections (a) and (b), if a department determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on public property and the consent of the government entity in charge of the public property cannot be obtained immediately, the department may seek a warrant under section 13-326-6 that authorizes the entry onto the public property for emergency control or eradication actions.

(f) A department may enter into a memorandum of understanding with an agent of the department that has appropriate expertise and experience to carry out actions under this section. [Eff] (Auth: HRS §194-7) (Imp: HRS §194-6)

§13-326-6 Warrants. A department or county seeking a warrant to control or eradicate an invasive species pursuant to this chapter on private or public property shall submit to the district court of the circuit in which the property is situated an affidavit that:

(1) Is made by an individual having knowledge of the facts alleged; and

(2) Establishes grounds for issuing the warrant."

[Eff] (Auth: HRS §194-7) (Imp: HRS §§194-5, 194-6)

4. The adoption of subtitle 14 of title 13, containing chapters 13-325 and 13-326, 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, where were adopted on [DATE], and filed with the Office of the Lieutenant Governor.

_____
Dawn S. Chang
Co-Chairperson
Hawaii Invasive Species Council

_____
Sharon Hurd
Co-Chairperson
Hawaii Invasive Species Council

APPROVED AS TO FORM:

/s/Danica L. Swenson
Deputy Attorney General

V. Administrative Matters

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

1. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach – *No Attachment*
2. Presentations to Industry Associations – *No Attachment*
3. Staff's Small Business Outreach – *No Attachment*

VI. Legislative Matters

A. Update on the following legislative matters:

1. **House Bill 2354 HD1 SD2 CD1 "Relating to the Small Business Regulatory Review Board"** – Clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to a request from small business owners

2. **Senate 2974 SD2 HD1 CD1 "Bill Relating to Economic Development" –** Establishes a Business Revitalization Task Force within the Department of Business, Economic Development, and Tourism to identify methods to improve Hawaii's general economic competitiveness and business climate, including by mitigating regulatory and tax burdens; requires a report to the legislature

HB2354 HD1 SD2 CD1

Measure Title:	RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.
Report Title:	Small Business Regulatory Review Board; Legislation; Small Business
Description:	Clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to requests from small business owners. (CD1)
Companion:	SB3043
Package:	Governor
Current Referral:	EET, JDC
Introducer(s):	SAIKI (Introduced by request of another party)

Sort by Date		Status Text
5/2/2024	H	Transmitted to Governor.
5/3/2024	S	Received notice of passage on Final Reading in House (Hse. Com. No. 830).
5/1/2024	H	Received notice of Final Reading (Sen. Com. No. 798).
5/1/2024	H	Passed Final Reading as amended in CD 1 with none voting aye with reservations; none voting no (0) and none excused (0).
5/1/2024	S	Passed Final Reading, as amended (CD 1). Ayes, 25; Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
4/25/2024	S	48 Hrs. Notice (as amended CD 1) 05-01-24
4/25/2024	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 51-24).
4/25/2024	H	Forty-eight (48) hours notice Wednesday 05-01-24.
4/25/2024	H	Reported from Conference Committee (Conf Com. Rep. No. 51-24) as amended in (CD 1).
4/24/2024	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 2 Aye(s): Senator(s) DeCoite, Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Fevella.
4/24/2024	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 3 Ayes: Representative(s) Holt, Tarnas, Takayama; Ayes with reservations: none; 0 Noes: none; and 2 Excused: Representative(s) Lamosao, Pierick.
4/23/2024	S	Conference committee meeting scheduled for 04-24-24 9:35AM; CR 325.

4/15/2024	H	Received notice of Senate conferees (Sen. Com. No. 677).
4/15/2024	S	Senate Conferees Appointed: DeCoite Chair; Rhoads Co-Chair; Fevella.
4/16/2024	S	Received notice of appointment of House conferees (Hse. Com. No. 738).
4/15/2024	H	House Conferees Appointed: Holt, Tarnas Co-Chairs; Lamosao, Takayama, Pierick.
4/12/2024	S	Received notice of disagreement (Hse. Com. No. 731).
4/11/2024	H	House disagrees with Senate amendment (s).
4/9/2024	H	Returned from Senate (Sen. Com. No. 585) in amended form (SD 2).
4/9/2024	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) Ihara). Transmitted to House.
4/5/2024	S	48 Hrs. Notice 04-09-24.
4/5/2024	S	Reported from JDC (Stand. Com. Rep. No. 3721) with recommendation of passage on Third Reading, as amended (SD 2).
4/4/2024	S	The committee(s) on JDC recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDC were as follows: 4 Aye(s): Senator(s) Rhoads, Gabbard, Elefante, San Buenaventura; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Awa.
3/27/2024	S	The committee(s) on JDC will hold a public decision making on 04-04-24 10:00AM; Conference Room 016 & Videoconference.
3/20/2024	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDC.
3/20/2024	S	Reported from EET (Stand. Com. Rep. No. 3147) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDC.
3/14/2024	S	The committee(s) on EET recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in EET were as follows: 4 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Kim.
3/11/2024	S	The committee(s) on EET has scheduled a public hearing on 03-14-24 1:01PM; Conference Room 229 & Videoconference.
3/7/2024	S	Referred to EET, JDC.
3/1/2024	S	Passed First Reading.
3/1/2024	S	Received from House (Hse. Com. No. 45).
2/29/2024	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Cochran, Holt excused (2). Transmitted to Senate.
2/29/2024	H	Reported from JHA (Stand. Com. Rep. No. 735-24), recommending passage on Third Reading.

2/16/2024	H	The committee on JHA recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 7 Ayes: Representative(s) Tarnas, Evslin, Ganaden, Ichiyama, Ilagan, Kong, Miyake; Ayes with reservations: none; Noes: none; and 3 Excused: Representative(s) Takayama, Holt, Souza.
2/14/2024	H	Bill scheduled to be heard by JHA on Friday, 02-16-24 2:00PM in House conference room 325 VIA VIDEOCONFERENCE.
2/12/2024	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JHA with none voting aye with reservations; none voting no (0) and Representative(s) Amato, Lowen, Nakashima, Quinlan, Todd excused (5).
2/12/2024	H	Reported from ECD (Stand. Com. Rep. No. 236-24) as amended in HD 1, recommending passage on Second Reading and referral to JHA.
2/7/2024	H	The committee on ECD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Holt, Lamosao, Hussey-Burdick, Kong, Nakamura, Quinlan, Pierick; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) La Chica.
2/2/2024	H	Bill scheduled for decision making on Wednesday, 02-07-24 10:30AM in conference room 423 VIA VIDEOCONFERENCE.
2/2/2024	H	The committee(s) on ECD recommend(s) that the measure be deferred.
1/30/2024	H	Bill scheduled to be heard by ECD on Friday, 02-02-24 10:30AM in House conference room 423 VIA VIDEOCONFERENCE.
1/26/2024	H	Referred to ECD, JHA, referral sheet 3
1/24/2024	H	Introduced and Pass First Reading.
1/22/2024	H	Pending introduction.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

HB2354 HD1 SD2 CD1

SB2974 SD2 HD1 CD1

Measure Title:	RELATING TO ECONOMIC DEVELOPMENT.
Report Title:	DBEDT; Task Force; Business Revitalization; Report
Description:	Establishes a Business Revitalization Task Force within the Department of Business, Economic Development, and Tourism to identify methods to improve Hawai'i's general economic competitiveness and business climate, including the mitigation of regulatory and tax burdens. Requires a report to the Legislature. (CD1)
Companion:	
Package:	None
Current Referral:	ECD, FIN
Introducer(s):	DECOITE, CHANG, FEVELLA, HASHIMOTO, KIDANI, MCKELVEY, Inouye, Moriwaki, Wakai

Sort by Date		Status Text
5/3/2024	S	Received notice of passage on Final Reading in House (Hse. Com. No. 830).
5/2/2024	S	Enrolled to Governor.
5/1/2024	H	Received notice of Final Reading (Sen. Com. No. 798).
5/1/2024	H	Passed Final Reading as amended in CD 1 with Representative(s) Amato voting aye with reservations; Representative(s) Kapela voting no (1) and none excused (0).
5/1/2024	S	Passed Final Reading, as amended (CD 1). Ayes, 25; Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
4/26/2024	H	Forty-eight (48) hours notice Wednesday 05-01-24.
4/26/2024	H	Reported from Conference Committee (Conf Com. Rep. No. 82-24) as amended in (CD 1).
4/26/2024	S	48 Hrs. Notice (as amended CD 1) 05-01-24.
4/26/2024	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 82-24).
4/25/2024	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 4 Ayes: Representative(s) Holt, Lamosao, La Chica, Pierick; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) Kong.

4/25/2024	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) DeCoite, Wakai, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/24/2024	S	Conference committee meeting to reconvene on 04-25-24 9:35AM; Conference Room 325.
4/23/2024	S	Conference committee meeting scheduled for 04-24-24 9:35AM; CR 325.
4/23/2024	S	Received notice of appointment of House conferees (Hse. Com. No. 805).
4/22/2024	H	House Conferees Appointed: Holt, Lamosao Co-Chairs; Kong, La Chica, Pierick.
4/15/2024	H	Received notice of Senate conferees (Sen. Com. No. 678).
4/15/2024	S	Senate Conferees Appointed: DeCoite Chair; Wakai Co-Chair; Fevella.
4/9/2024	H	Received notice of disagreement (Sen. Com. No. 670).
4/9/2024	S	Senate disagrees with House amendments.
4/9/2024	S	Received from House (Hse. Com. No. 680).
4/5/2024	H	Passed Third Reading with Representative(s) Hussey-Burdick voting aye with reservations; Representative(s) Kapela voting no (1) and Representative(s) Souza excused (1). Transmitted to Senate.
4/5/2024	H	Reported from FIN (Stand. Com. Rep. No. 1794-24), recommending passage on Third Reading.
4/2/2024	H	The committee on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 15 Ayes: Representative(s) Yamashita, Kitagawa, Aiu, Chun, Cochran, Garrett, Kahaloa, Kila, Lamosao, Morikawa, Nishimoto, Poepoe, Takenouchi, Alcos, Ward; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) Kobayashi.
3/29/2024	H	Bill scheduled to be heard by FIN on Tuesday, 04-02-24 2:30PM in House conference room 308 VIA VIDEOCONFERENCE.
3/22/2024	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on FIN with Representative(s) Amato, Hussey-Burdick, Kapela, Perruso voting aye with reservations; none voting no (0) and Representative(s) Martinez, Nakashima, Quinlan excused (3).
3/22/2024	H	Reported from ECD (Stand. Com. Rep. No. 1288-24) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
3/19/2024	H	The committee on ECD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Holt, Lamosao, La Chica, Nakamura, Quinlan, Pierick; Ayes with reservations: Representative(s) Hussey-Burdick; Noes: none; and 1 Excused: Representative(s) Kong.

3/14/2024	H	Bill scheduled to be heard by ECD on Tuesday, 03-19-24 10:00AM in House conference room 423 VIA VIDEOCONFERENCE.
3/7/2024	H	Referred to ECD, FIN, referral sheet 16
3/7/2024	H	Pass First Reading
3/5/2024	H	Received from Senate (Sen. Com. No. 233) in amended form (SD 2).
3/5/2024	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/1/2024	S	48 Hrs. Notice 03-05-24.
3/1/2024	S	Reported from WAM (Stand. Com. Rep. No. 2912) with recommendation of passage on Third Reading, as amended (SD 2).
2/28/2024	S	The committee(s) on WAM recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in WAM were as follows: 12 Aye(s): Senator(s) Dela Cruz, Moriwaki, Aquino, DeCoite, Hashimoto, Inouye, Kanuha, Kidani, Kim, Lee, Wakai, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Shimabukuro.
2/23/2024	S	The committee(s) on WAM will hold a public decision making on 02-28-24 10:01AM; Conference Room 211 & Videoconference.
2/16/2024	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
2/16/2024	S	Reported from EET (Stand. Com. Rep. No. 2522) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM.
2/13/2024	S	The committee(s) on EET recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in EET were as follows: 5 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Kim, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
2/9/2024	S	The committee(s) on EET has scheduled a public hearing on 02-13-24 1:20PM; Conference Room 229 & Videoconference.
1/26/2024	S	Referred to EET, WAM.
1/24/2024	S	Passed First Reading.
1/24/2024	S	Introduced.

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SB2974 SD2 HD1 CD1

VII. Election of Board Members

A. Discussion and Action on the following:

1. Chairperson, pursuant to Section 201M(c), HRS – *See attachment*
2. Vice Chair
3. Second Vice Chair

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;

(3) Two members shall be appointed from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio, voting member of the board;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than

one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

(1) Adopt any rules necessary to implement this chapter;

(2) Organize and hold conferences on problems affecting small business; and

(3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3; am L 2017, c 174, §3; am L 2018, c 18, §5]