

**§ 180.412 Sethoxydim; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
Alfalfa, forage .....	40
Alfalfa, hay .....	40
Almond, hulls .....	2.0
Apricot .....	0.2
Apple, wet pomace .....	0.8
Asparagus .....	4.0
Bean, succulent .....	15
Beet, sugar, molasses ...	10
Beet, sugar, tops .....	3.0
Blueberry .....	4.0
Borage, meal .....	10
Borage, seed .....	6.0
Buckwheat, flour .....	25
Buckwheat, grain .....	19
Caneberry subgroup 13	
A .....	5.0
Canola, meal .....	40
Canola, seed .....	35
Cattle, fat .....	0.2
Cattle, meat .....	0.2
Cattle, meat byproducts	1.0
Cherry, sweet .....	0.2
Cherry, tart .....	0.2
Citrus, dried pulp .....	1.5
Clover, forage .....	35
Clover, hay .....	55
Coriander, leaves .....	4.0
Corn, field, forage .....	2.0
Corn, field, grain .....	0.5
Corn, field, stover .....	2.5
Corn, sweet, forage .....	3.0
Corn, sweet, kernel plus	
cob with husk removed	0.4
Corn, sweet, stover .....	3.5
Cotton, undelinted seed	5.0
Cowpea, forage .....	15
Cowpea, hay .....	50
Cranberry .....	2.5
Dillweed, fresh leaves ...	10
Egg .....	2.0
Flax, seed .....	5.0
Fruit, citrus, group 10 ...	0.5
Fruit, pome, group 11 ...	0.2
Goat, fat .....	0.2
Goat, meat .....	0.2
Goat, meat byproducts ...	1.0
Grape .....	1.0
Grape, raisin .....	2.0
Hog, fat .....	0.2
Hog, meat .....	0.2
Hog, meat byproducts ...	1.0
Horse, fat .....	0.2
Horse, meat .....	0.2
Horse, meat byproducts	1.0
Juneberry .....	5.0
Lingonberry .....	5.0
Milk .....	0.5
Nectarine .....	0.2
Nut, tree, group 14 .....	0.2
Okra .....	2.5
Pea and bean, dried	
shelled, except soy-	
bean, subgroup 6C ...	25
Pea, field, hay .....	40
Pea, field, vines .....	20
Pea, succulent .....	10
Peach .....	0.2
Peanut .....	25
Peppermint, tops .....	30
Pistachio .....	0.2

Commodity	Parts per million
Potato granules/flakes ....	8.0
Potato waste, processed	8.0
Poultry, fat .....	0.2
Poultry, meat .....	0.2
Poultry, meat byproducts	2.0
Radish, tops .....	4.5
Rapeseed, meal .....	40
Rapeseed, seed .....	35
Safflower, seed .....	15
Salal .....	5.0
Sheep, fat .....	0.2
Sheep, meat .....	0.2
Sheep, meat byproducts	1.0
Soybean, hay .....	10
Soybean, seed .....	16
Spearmint, tops .....	30
Strawberry .....	10
Sunflower, meal .....	20
Sunflower, seed .....	7.0
Turnip, tops .....	5.0
Vegetable, brassica,	
leafy, group 5 .....	5.0
Vegetable, bulb, group 3	1.0
Vegetable, cucurbit,	
group 9 .....	4.0
Vegetable, fruiting, group	
8 .....	4.0
Vegetable, leafy, except	
brassica, group 4 .....	4.0
Vegetable, root and	
tuber, group 1 .....	4.0

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 282**

[EPA-R09-UST-2007-1122; FRL-8716-3]

**Underground Storage Tank Program: Approved State Program for Hawaii**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. This action codifies EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the State of Hawaii's underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

**DATES:** This final rule is effective November 17, 2008, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of Hawaii's underground storage tank program must be received by the close of business October 17, 2008. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of November 17, 2008, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-UST-2007-112, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [amaro.laurie@epa.gov](mailto:amaro.laurie@epa.gov).
- *Fax:* (415) 947-3530.
- *Mail:* Laurie Amaro, U.S. EPA Region 9, 75 Hawthorne Street, (Mail Code: WST-8), San Francisco, CA 94105.

- *Hand Delivery:* Laurie Amaro, Waste Management Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Such deliveries are only accepted during EPA's normal hours of operation and should be made to the EPA receptionist office on the first floor.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-UST-2007-112. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means WPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 9 Environmental Information Center Library, 13th Floor, 75 Hawthorne Street, San Francisco, CA 94706; Business hours: 9 a.m. to noon and 1 p.m. to 4 p.m., Monday–Thursday. *Phone Number:* (415) 947–4406; *e-mail address:* [library-region9@epa.gov](mailto:library-region9@epa.gov).

You may also view and copy Hawaii's underground storage tank statute and regulations at: Hawaii Department of Health, Solid and Hazardous Waste Branch, 919 Ala Moana Blvd., Room 212, Honolulu, Hawaii 96814–4920. Call (808) 586–4226 in advance to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Laurie Amaro, U.S. EPA Region 9, 75 Hawthorne Street, (Mail Code: WST–8), San Francisco, CA 94105. *Phone Number:* (415) 972–3364; *e-mail address:* [amaro.laurie@epa.gov](mailto:amaro.laurie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 9004 of RCRA, 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a rule in the **Federal Register** granting approval to Hawaii on September 25, 2002, and approval was effective on September 30, 2002 (67 FR 60161).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of Hawaii's underground storage tank program. This codification reflects the

State program in effect at the time EPA granted Hawaii's approval, in accordance with section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Hawaii program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of Hawaii's underground storage tank program, EPA has added section 282.61 to title 40 of the CFR. 40 CFR 282.61(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.61 also references the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the memorandum of Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues of these provisions. Therefore, Hawaii's inspection and enforcement authorities are not incorporated by reference, nor are they part of Hawaii's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.61(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of Hawaii's enforcement authority. Hawaii's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.61(d)(1)(iii) of the codification simply lists for reference and clarity the

Hawaii statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

When the phrases, "insofar" and "except insofar," are used in Appendix A (which provides an informational listing of the state requirements incorporated by reference in Part 282 of the Code of Federal Regulations), refer to the binders in the codification materials for specifics as to any words, phrases, sentences, paragraphs, or subsections that are "crossed-out" in the binders. These crossed-out materials are not incorporated by reference in Part 282 of the Code of Federal Regulations.

**Statutory and Executive Order Reviews**

This action only codifies EPA-authorized underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION**). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.
2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act.
3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.
4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act.
5. Executive Order 13132: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).
6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply

to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. National Technology Transfer and Advancement Act—EPA has previously addressed the non-applicability of the National Technology Transfer and Advancement Act in its final approval of this state program. See 67 FR 60161 for final approval of state program. Section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Nevertheless, to allow time for public comment, this action will be effective on November 17, 2008.

#### List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: September 5, 2008.

**Jane Diamond,**

*Acting Regional Administrator, EPA Region 9.*

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

#### PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

#### Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.61 to read as follows:

##### § 282.61 Hawaii State-Administered Program.

(a) The State of Hawaii’s underground storage tank program is approved in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State’s program, as administered by the Hawaii Department of Health, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Hawaii underground storage tank program on September 25, 2002, and approval was effective on September 30, 2002.

(b) Hawaii has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) To retain program approval, Hawaii must revise its approved program to adopt new changes to the Federal Subtitle I program that make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Hawaii obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Hawaii has final approval for the following elements submitted to EPA in the State’s program application for final approval. On September 25, 2002, EPA published a rule approving the State’s program in the **Federal Register**, 67 FR 60161. That approval became effective on September 30, 2002. Copies of Hawaii’s program application may be obtained from the Hawaii Department of Health, Solid and Hazardous Waste Branch, 919 Ala Moana Boulevard, Suite 212, Honolulu, HI 96814.

(1) *State statutes and regulations.* (i) The provisions cited in paragraph (d)(1)(i) of this section are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Hawaii Statutory Requirements Applicable to the Underground Storage Tank Program, 2001.

(B) Hawaii Regulatory Requirements Applicable to the Underground Storage Tank Program, 2001.

(ii) EPA considered the following statutes and regulations in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include of the Hawaii Revised Statutes:

- (1) Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks.
- Section 342L–1 Definitions (insofar as “complaint” sets forth enforcement authorities)
  - Section 342L–2 Administration
  - Section 342L–3 Powers; rulemaking; appointment of hearings officers
  - Section 342L–7 Authority to obtain information and data, inspect, and require and conduct activities; penalties for disclosure
  - Section 342L–8 Enforcement
  - Section 342L–9 Emergency powers; procedures
  - Section 342L–10 Penalties
  - Section 342L–11 Administrative penalties
  - Section 342L–12 Injunctive relief
  - Section 342L–12.5 Intervention
  - Section 342L–13 Appeal
  - Section 342L–15 Public records; confidential information
  - Section 342L–17 Other action not barred
  - Section 342L–18 Enforcement by state and county authorities
  - Section 342L–19 Other powers of department not affected
  - Section 342L–20 Effect of laws, ordinances, and rules
  - Section 342L–21 Priority in courts
  - Section 342L–30 Notification requirements (insofar as paragraph (i) of this section grants the Department authority to assess penalties for noncompliance)
  - Section 342L–51 Leaking underground storage tank fund
  - Section 342L–52 Response to suspected or confirmed releases (insofar as it sets forth enforcement authorities)
  - Section 342L–53 Cost recovery
- (2) Hawaii Revised Statutes, Chapter 342D, Water Pollution.
- Section 342D–8 Inspection of premises
  - Section 342D–9 Enforcement
  - Section 342D–10 Emergency powers; procedures
  - Section 342D–11 Injunctive relief
  - Section 342D–12 Appeal
  - Section 342D–14 Public records; confidential information; penalties
  - Section 342D–30 Civil penalties
  - Section 342D–31 Administrative penalties
  - Section 342D–32 Negligent violations
  - Section 342D–33 Knowing violations
  - Section 342D–34 Knowing endangerment
  - Section 342D–35 False statements
  - Section 342D–36 Treatment of single operational upset
  - Section 342D–37 Responsible corporate officer as “person”

Section 342D-39 Disposition of collected fines and penalties  
 Section 342D-52 Testing of water and aquatic and other life  
 (3) Hawaii Revised Statutes, Chapter 128D, Environmental Response Law.  
 Section 128D-4 State response authorities; uses of fund (insofar as it sets forth enforcement authorities for certain corrective actions)

(B) The regulatory provisions include; Hawaii Administrative Rules, Chapter 11-281, Underground Storage Tanks:

Section 11-281-03 Definitions (insofar as "complaint" sets forth enforcement authorities; and insofar as "field citation" and "force majeure" relate to the Department's enforcement authorities)  
 Section 11-281-80 Public participation for corrective action plans (insofar as paragraph (j) of this section sets forth enforcement authorities)  
 Section 11-281-121 Purpose  
 Section 11-281-122 Applicability  
 Section 11-281-123 Issuance and contents of a field citation  
 Section 11-281-124 Notice of citation  
 Section 11-281-125 Field citation order and settlement agreement  
 Section 11-281-126 Correcting violations; paying the settlement amount; and signing the settlement agreement  
 Section 11-281-127 Method of payment  
 Section 11-281-128 Field citation penalty amounts for settlement  
 Section 11-281-131 Appendices VII and VIII (insofar as they relate to the Department's field citation program)

(iii) The following statutory and regulatory provisions are broader in scope than the Federal program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include; Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks:

Section 342L-1 Definitions ("owner" insofar as it includes persons who hold indicia of ownership to protect an interest in a tank system; "permit" insofar as it sets forth a permitting program; and "regulated substance" insofar as it includes other substances as designated by the Department)  
 Section 342L-4 Permits; procedures for (insofar as it establishes a permitting program)  
 Section 342L-5 Variances allowed (insofar as variances exceed the scope of the federal program)  
 Section 342L-6 Variances; procedures for (insofar as variances exceed the scope of the federal program)  
 Section 342L-14 Fees (insofar as it grants the director authority to establish fees for registering underground storage tanks)  
 Section 342L-16 Non-liability of department personnel (insofar as it was specifically not authorized in the **Federal Register** notice of program approval)

Section 342L-23 Directory of underground storage tank service providers (insofar as it was specifically not authorized in the **Federal Register** notice of program approval)

Section 342L-31 Permit requirements and transfer of permit (insofar as it requires owners and operators to obtain permits to install or operate UST systems)

Section 342L-50 Definitions (insofar as the definition of "owner" defines lenders as operators and subjects such lenders to requirements other than the corrective action requirements)

(B) The regulatory provisions include the following sections of Hawaii Administrative Rules, Chapter 11-281, Underground Storage Tanks:

Section 11-281-03 Definitions ("farm tank" insofar as it regulates tanks on farms that are not used for farm or commercial purposes; "regulated substance" insofar as the Department can designate other substances; "reportable quantity" insofar as it sets forth a reporting threshold of 10 lbs. for trichloropropane; and "underground storage tank" insofar as its designation of farm tanks exceeds the scope of the federal regulations)  
 Section 11-281-23 Permit required (insofar as it relates to the permitting program)  
 Section 11-281-24 Application for a permit (insofar as paragraphs (a), (b), (c)(3), and (c)(4) of this section relate to the permitting program)  
 Section 11-281-25 Permit (insofar as paragraphs (a) and (b) of this section relate to the permitting program)  
 Section 11-281-26 Permit renewals (insofar as it relates to the permitting program)  
 Section 11-281-27 Action on and timely approval of an application for a permit (insofar as it relates to the permitting program)  
 Section 11-281-28 Permit conditions (insofar as it relates to the permitting program)  
 Section 11-281-29 Modification of permit and notice of change (insofar as it relates to the permitting program)  
 Section 11-281-30 Revocation or suspension of permit (insofar as it relates to the permitting program)  
 Section 11-281-31 Change in owner or operator for a permit (insofar as it relates to the permitting program)  
 Section 11-281-32 Variances allowed (insofar as variances exceed the scope of the federal program)  
 Section 11-281-33 Variance applications (insofar as variances exceed the scope of the federal program)  
 Section 11-281-34 Maintenance of permit or variance (insofar as it relates to the permitting program)  
 Section 11-281-35 Fees (insofar as it establishes registration fees)  
 Section 11-281-45 Reporting and recordkeeping (insofar as paragraph (b)(3) of this section addresses posting of signs; and paragraph (c)(6) of this section requires maintenance of permit records)

Section 11-281-73 Posting of signs (insofar as there is no analogous provision in the federal regulations)  
 Section 11-281-131 Appendices II, IV, V, and VI of this section (insofar as they address permit application and transfer procedures and variances)

(2) *Statement of legal authority.* (i) "Attorney General's Statement," signed by the State Attorney General on October 12, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Hawaii to EPA, October 12, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on May 23, 2001, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on May 23, 2001, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 9 and the Hawaii Department of Health, signed by the EPA Regional Administrator on September 13, 2002, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order "Hawaii" and its listing to read as follows:

**Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations**

\* \* \* \* \*

**Hawaii**

(a) The statutory provisions include:

(1) Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks.  
 Section 342L-1 Definitions (except "complaint" insofar as it sets forth

- enforcement authorities; "owner" insofar as it includes persons who hold indicia of ownership to protect an interest in a tank system; "permit" insofar as it sets forth a permitting program; and "regulated substance" insofar as it includes other substances as designated by the Department)
- Section 342L-7.5 Record maintenance
- Section 342L-30 Notification requirements (except paragraph (i) of this section insofar as it grants the Department authority to assess penalties for noncompliance)
- Section 342L-32 Standards for tanks and tank systems
- Section 342L-33 Release detection
- Section 342L-34 Reporting of releases
- Section 342L-35 Response to suspected or confirmed releases
- Section 342L-36 Financial responsibility
- Section 342L-37 Underground storage tank and tank system change in service and closure requirements
- Section 342L-50 Definitions (except "owner" insofar as it defines lenders as operators and subjects such lenders to requirements other than the corrective action requirements)
- (2) Hawaii Revised Statutes, Chapter 342D, Water Pollution.
- Section 342D-1 Definitions
- Section 342D-4 Duties; rules
- Section 342D-7 Variances (Insofar as paragraph (a) of this appendix is applicable to the underground storage tank program)
- Section 342D-38 Hazardous substance defined
- Section 342D-50 Prohibition
- Section 342D-51 Affirmative duty to report discharges
- (3) Hawaii Revised Statutes, Chapter 342E, Nonpoint Source Pollution Management and Control.
- Section 342E-1 Definitions
- Section 342E-2 Nonpoint source pollution management and control program
- (b) The regulatory provisions include:
- (1) Hawaii Administrative Rules, Chapter 11-281, Underground Storage Tanks
- Section 11-281-01 Applicability
- Section 11-281-02 Prohibition for deferred underground storage tanks or tank systems
- Section 11-281-03 Definitions (except "complaint" insofar as it sets forth enforcement authorities; "farm tank" insofar as it regulates tanks on farms that are not used for farm or commercial purposes; "field citation" and "force majeure" insofar as they relate to the Department's enforcement authorities; "regulated substance" insofar as the Department can designate other substances; "reportable quantity" insofar as it sets forth a reporting threshold of 10 lbs. for trichloropropane; and "underground storage tank" insofar as its designation of farm tanks exceeds the scope of the federal regulations)
- Section 11-281-11 Performance standards for underground storage tanks and tank systems
- Section 11-281-12 Tank requirements
- Section 11-281-13 Piping requirements
- Section 11-281-14 Spill and overflow prevention equipment
- Section 11-281-15 Installation
- Section 11-281-16 Certification of installation
- Section 11-281-17 Secondary containment
- Section 11-281-18 Upgrading of existing underground storage tanks and tank systems
- Section 11-281-21 Notification requirements for tanks brought into use before the effective date of these rules
- Section 11-281-22 Notification requirements for tanks brought into use on or after the effective date of these rules
- Section 11-281-24 Application for a permit (except insofar as paragraphs (a), (b), (c)(3), and (c)(4) of this section relate to the permitting program)
- Section 11-281-25 Permit (except insofar as paragraphs (a) and (b) of this section relate to the permitting program)
- Section 11-281-41 Spill and overflow control
- Section 11-281-42 Operation and maintenance of corrosion protection systems
- Section 11-281-43 Compatibility
- Section 11-281-44 Repairs
- Section 11-281-45 Reporting and recordkeeping (except paragraph (b)(3) of this section insofar as it addresses posting of signs; and paragraph (c)(6) insofar as it requires maintenance of permit records)
- Section 11-281-51 General requirements for all underground storage tanks or tank systems
- Section 11-281-52 Methods of release detection for tanks
- Section 11-281-53 Methods of release detection for piping
- Section 11-281-54 Release detection recordkeeping
- Section 11-281-61 Reporting of suspected releases
- Section 11-281-62 Investigation of off-site impacts
- Section 11-281-63 Release investigation and confirmation steps
- Section 11-281-64 Reporting and cleanup of spills and overfills
- Section 11-281-71 General
- Section 11-281-72 Immediate response actions
- Section 11-281-74 Initial abatement measures and site assessment
- Section 11-281-75 Initial site characterization
- Section 11-281-76 Free product removal
- Section 11-281-77 Investigation of soil and ground water contamination
- Section 11-281-78 Site cleanup criteria
- Section 11-281-78.1 Notification of confirmed releases
- Section 11-281-79 Corrective action plan
- Section 11-281-80 Public participation for corrective action plans [except paragraph (j) insofar as it sets forth enforcement authorities]
- Section 11-281-80.1 Reporting and recordkeeping
- Section 11-281-81 Temporary closure
- Section 11-281-82 Permanent closure and change-in-service
- Section 11-281-83 Site assessment
- Section 11-281-84 Previously closed underground storage tanks or tank systems
- Section 11-281-85 Closure records
- Section 11-281-91 Applicability
- Section 11-281-93 Definition of terms
- Section 11-281-94 Amount and scope of required financial responsibility
- Section 11-281-95 Allowable mechanisms and combinations of mechanisms
- Section 11-281-96 Financial test of self-insurance
- Section 11-281-97 Guarantee
- Section 11-281-98 Insurance and risk retention group
- Section 11-281-99 Surety bond
- Section 11-281-100 Letter of credit
- Section 11-281-101 Trust fund
- Section 11-281-102 Standby trust fund
- Section 11-281-103 Local government bond rating test
- Section 11-281-104 Local government financial test
- Section 11-281-106 Local government guarantee
- Section 11-281-107 Local government fund
- Section 11-281-108 Substitution of financial assurance mechanisms by owner or operator
- Section 11-281-109 Cancellation or nonrenewal by a provider of financial assurance
- Section 11-281-110 Reporting by owner or operator
- Section 11-281-111 Recordkeeping
- Section 11-281-112 Drawing on financial assurance mechanisms
- Section 11-281-113 Release from financial responsibility
- Section 11-281-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance
- Section 11-281-115 Replenishment of guarantees, letters of credit, or surety bonds
- Section 11-281-131 Appendices I and III (Notification for Underground Storage Tanks, June 1999 and Certification of Underground Storage Tank Installation, June 1999)
- (2) Hawaii Administrative Rules, Chapter 11-264, Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart J, Tank Systems.
- Section 11-264-190 Applicability
- Section 11-264-191 Assessment of existing tank system's integrity
- Section 11-264-192 Design and installation of new tank systems or components
- Section 11-264-193 Containment and detection of releases
- Section 11-264-194 General operating requirements
- Section 11-264-195 Inspections
- Section 11-264-196 Response to leaks or spills and disposition of leaking or unfit-for use tank systems

Section 11-264-197 Closure and post-closure care  
 Section 11-264-198 Special requirements for ignitable or reactive wastes  
 Section 11-264-199 Special requirements for incompatible wastes  
 Section 11-264-200 Air emission standards

[FR Doc. E8-21497 Filed 9-16-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-8039]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation proving the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Date:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or obtain additional information, contact David Stearrett, Federal Emergency Management Agency, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return,

communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

Previously, FEMA identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on the FEMA initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds the notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because the communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating the community will be

suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

#### PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

#### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows: