



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R09-UST-2025-0035; FRL-12586-02-R9]

Hawaii: Amendment to Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 7, 2022, the State of Hawaii (Hawaii or State) received final approval, from the Environmental Protection Agency (EPA), of revisions to its Underground Storage Tank Program (UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to amend its final approval of the UST Program. The amendment clarifies the statutory provisions that are part of the approved UST Program and identifies some additional statutory provisions that are broader in scope and not part of the approved UST Program. This action also codifies the EPA's approval of Hawaii's revised UST Program and incorporates by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov> (our preferred method).
Follow the online instructions for submitting comments.
- *Email:* cosson.michael@epa.gov. Include the Docket ID No. [EPA-R09-UST-2025-0035] in the subject line of the message.

Instructions: The EPA's policy is that all comments received through email will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal

<https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email 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, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the 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.

The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Michael Cosson, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action and all documents that form the basis of this action and associated publicly available docket materials are available electronically at <https://www.regulations.gov>. For the documents

that the EPA is incorporating by reference, use the search function to perform a search on the Docket ID number, EPA-R09-UST-2025-0035. For additional materials related to Hawaii's UST Program revisions, search on EPA-R09-UST-2020-0258, a related Docket ID number.

The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Michael Cosson for alternative access to docket materials.

Please also contact Michael Cosson if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Cosson, RCRA Programs and Cleanup Branch, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105; Phone number: (415) 972-3652; email address: cosson.michael@epa.gov. Please contact Michael Cosson by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Amended Approval of Revisions to Hawaii's Underground Storage Tank Program

A. Why are revisions to state UST programs necessary?

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain a UST program that is no less stringent than the Federal program. When the EPA revises the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their UST programs. To become federally enforceable, the EPA must then approve the changes.

B. What is the history of the EPA's approval of Hawaii's UST Program?

The EPA first granted Hawaii final authorization to implement a UST program on September 25, 2002, effective September 30, 2002 (67 FR 60161). The EPA incorporated by reference and codified the approved Hawaii program on September 17, 2008 (73 FR 53742). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

On July 15, 2015 (80 FR 41566), the EPA published a final rule which finalized revisions to the 1988 UST regulations and to the 1988 state program approval regulations (2015 Federal Revisions). On October 8, 2018, in accordance with 40 CFR 281.51(a), Hawaii submitted a complete program revision application (State Application) seeking approval for its UST Program revisions corresponding to the 2015 Federal Revisions.

On August 14, 2020 (85 FR 49611), the EPA issued a tentative determination that the revisions to Hawaii's UST Program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Hawaii program continues to provide for adequate enforcement of compliance (40 CFR 281.11(b)). On March 7, 2022 (87 FR 12593), the EPA granted Hawaii final approval to operate its updated UST Program.

C. What decision has the EPA made in this rule?

As stated, the EPA tentatively approved Hawaii's revised UST Program on August 14, 2020 (85 FR 49611) and granted final approval on March 7, 2022 (87 FR 12593). The EPA is not revising its determination to approve Hawaii's revised UST Program. Rather, the EPA is amending aspects of its final approval to clarify the Hawaii statutes that are part of the approved program and those that are broader in scope and not part of the approved program.

D. What is the effect of this amended approval on the regulated community?

Section 9004 of RCRA, 42 U.S.C. 6991c, as amended, allows the EPA to approve state

UST programs to operate in lieu of the Federal program. The EPA's approval of Hawaii's revised UST Program on March 7, 2022 (87 FR 12593), did not impose additional requirements on the regulated community because the requirements were already in effect in Hawaii. The action approved existing state requirements as meeting Federal requirements and rendered them federally enforceable. With this amended final approval, the EPA clarifies the Hawaii statutes that are part of the approved program and that are federally enforceable and identifies some additional statutory provisions that are broader in scope and not part of the approved UST Program. This minor revision to the scope of its approval, like the EPA's final approval on March 7, 2022, does not impose additional requirements on the regulated community.

E. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rulemaking because we view this as a noncontroversial action and anticipate no adverse comment. The EPA already accepted public comment on its approval of Hawaii's revised UST Program. During the public comment period, the EPA did not receive any adverse comment on its approval decision and received only one comment pertaining to an incorrectly cited regulation (87 FR 12593, March 7, 2022). Because the EPA has already approved the revised UST Program, the EPA does not expect to receive adverse public comment on this minor revision to the scope of its approval.

F. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the "Proposed Rules" section of this issue of the **Federal Register** that serves as the proposal to amend its approval of the State's UST Program revisions and provides an opportunity for public comment. The EPA is not requesting public comment on its approval decision, which is already final, but on clarifications to the scope of its approval. If the EPA receives comments that oppose the amendments to its prior approval, the EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before it becomes effective. The EPA will then address all public comments in a later final rule. You may not have another

opportunity to comment. If you want to comment on the amendments to the EPA's approval, you must do so at this time.

G. What changes is the EPA approving with this action?

In the EPA's proposed approval document on August 14, 2020 (85 FR 49611), the EPA stated that Hawaii had the authority to govern the regulation, operation, maintenance, and closure of USTs under Hawaii Revised Statutes (HRS) sections 342L-1 through 342L-53. This proposed approval should have reflected amendments to the UST Program statutes and stated that Hawaii has statutory authority for the UST Program under HRS sections 342L-1 through 342L-62.

The EPA's approval also identified provisions in Hawaii's Administrative Rules that are broader in scope and not part of the federally approved program or federally enforceable. The EPA's approval, however, identified only some of the UST-related provisions in Hawaii's statutes that are broader in scope and not federally enforceable. Therefore, this decision amends the EPA's prior approval to identify additional statutory provisions in HRS sections 342L-1 through 342L-62 that are broader in scope and not federally enforceable. Hawaii statutes that are broader in scope than the Federal UST rules are discussed in section I.I. of this preamble.

H. What is a "broader in scope" provision?

States may enact laws that are more stringent than their Federal counterparts. *See* RCRA section 9008, 42 U.S.C. 6991g. When an approved state program includes requirements that are considered more stringent than those required by Federal law, the more stringent requirements become part of the federally approved program in accordance with 40 CFR 281.12(a)(3)(i).

In addition, states may enact laws which are broader in scope than their Federal counterparts in accordance with 40 CFR 281.12(a)(3)(ii). State requirements that go beyond the scope of the Federal program are broader in scope. These requirements are not part of the federally approved program, and the EPA cannot enforce them. Although broader in scope requirements in Hawaii's UST Program are enforceable by the State in accordance with Hawaii law, they are not Federal RCRA requirements.

I. What statutes in Hawaii's UST Program are broader in scope?

In the EPA's proposed approval document on August 14, 2020 (85 FR 49611), the EPA identified several statutory provisions as broader in scope and not part of the federally approved program. The EPA found that the definition of "regulated substance" in HRS section 342L-1 is broader in scope than the requirements in the Federal program to the extent that this provision allows the Hawaii UST Program to regulate substances that are not regulated under the Federal program. The EPA also identified HRS section 342L-14, which allows the Director of the Hawaii Department of Health (HDOH) to assess fees for HDOH services, as broader in scope because there are no Federal requirements addressing the establishment of fees for services.

Further, the EPA identified HRS sections 342L-1 (definition of "variance"), 342L-5 (variance allowed) and 342L-6 (procedures for variances) as establishing requirements that are broader in scope, to the extent that variances under these provisions result in the imposition of requirements that are broader in scope than the Federal requirements. However, the EPA also stated that, to the extent that variances granted under these provisions result in the imposition of requirements that are more stringent than the Federal UST requirements, those requirements will be federally enforceable as part of the authorized State program.

The EPA is now identifying additional statutory provisions in Hawaii's UST Program that are broader in scope. Several of these provisions relate to permitting. In the EPA's proposed rulemaking, the EPA identified the UST permitting regulations in Hawaii Administrative Rules (HAR) sections 11-280.1-300 through 11-280.1-335 as broader in scope because the Federal program does not contain permitting requirements. For the same reason, the EPA is now identifying HRS section 342L-4, allowing the HDOH to establish procedures for granting permits, as broader in scope. HRS section 342L-31, which establishes a permitting requirement and rules for permit transfers, is broader in scope for the same reason. Finally, under HRS section 342L-4.5, the HDOH is prohibited from issuing permits for new underground storage tanks within 100 yards of the shoreline, as "shoreline" is defined in HRS section 342L-1. HRS

section 342 L-4.5 and the definition of “shoreline” in HRS section 342L-1 are broader in scope because, as noted, the Federal program does not contain analogous permitting requirements.

In addition to the above statutes related to permitting, the EPA is identifying other provisions in the statutes governing Hawaii’s UST Program as broader in scope. First, HRS section 342L-16 provides HDOH personnel with liability protection for actions performed as part of their duties. This provision is broader in scope because there is no Federal requirement regarding liability protections for state UST program personnel. Second, the EPA is identifying HRS section 342L-23, which requires the Director of the HDOH to establish and maintain a directory of UST service providers, as broader in scope because there is no analogous provision in the Federal program. Third, the EPA is identifying HRS section 342L-30(g), which establishes notification requirements on any person selling a UST or UST system, and HRS section 342L-30(h), which establishes notification requirements for any person who deposits regulated substances into a UST or UST system, as broader in scope because there are no analogous Federal notification requirements. Fourth, HRS sections 342L-61 and 342L-62 establish and define the duties of an advisory committee on leaks from certain UST facilities. These provisions are broader in scope because there is no analogous Federal requirement for such a committee.

In summary, in the EPA’s proposed rulemaking and in this action, the EPA has identified the following HRS sections as broader in scope: 342L-1 (definitions of “regulated substance” and “shoreline”), 342L-4 (establishing procedures for granting permits), 342L-4.5 (restricting permitting for USTs near the shoreline), 342L-14 (allowing assessment of fees), 342L-16 (protecting personnel from liability), 342L-23 (creating directory of UST service providers), 342L-30(g) and (h) (notification requirements), 342L-31 (requiring a permit), 342L-61 (establishing a fuel tank advisory committee), and 342L-62 (defining committee duties). The EPA also stated that HRS 342L-1 (definition of “variance”), 342L-5 (variances allowed), and 342L-6 (procedures for variances) may in some instances create requirements that are broader in scope than the Federal requirements.

For a summary of the Hawaii regulations that the EPA has identified as broader in scope, see the EPA's proposed rulemaking (85 FR 49611, August 14, 2020) or section II of this preamble.

J. Hawaii submitted its program revision application on October 8, 2018. To what extent is the EPA approving amendments to Hawaii's UST Program made by Hawaii after that date?

On October 8, 2018, Hawaii submitted a program revision application. After submitting its application, Hawaii provided the EPA a document, dated February 18, 2020, containing the text of its regulations related to its UST Program. The EPA used this document as the basis for its tentative determination, on August 14, 2020, to grant approval to Hawaii's revised UST Program. This document, dated February 18, 2020, is the most current regulatory text received from Hawaii by the EPA. Hawaii has not sought approval for any amendments to Hawaii's statutes or regulations related to USTs that came into effect after February 18, 2020.

Accordingly, the EPA has identified February 18, 2020, as the cutoff date for its approval of revisions to Hawaii's UST Program. Any amendments to Hawaii's UST-related statutes or regulations made by Hawaii after that date are not part of the approved UST Program. For this reason, the EPA's analysis of the statutes and regulations in Hawaii's UST Program that are broader in scope covers only those statutes and regulations in effect as of February 18, 2020.

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the CFR. The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST programs and state requirements that can be federally

enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Hawaii's UST Program?

The EPA incorporated by reference and codified the approved Hawaii program on September 17, 2008 (73 FR 53742). On March 7, 2022, the EPA granted Hawaii final approval to operate its revised UST Program (87 FR 12593). When approving the UST Program, the EPA stated that it intended, at a subsequent date, to amend 40 CFR part 282, subpart B to reflect the EPA's approval of Hawaii's program changes. Through this action, the EPA is amending 40 CFR 282.61 to incorporate by reference and codify Hawaii's revised UST Program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Hawaii UST Program, including the revisions made to the UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Hawaii's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through <https://www.regulations.gov> by searching on EPA-R09-UST-2025-0035.

Specifically, in 40 CFR 282.61(d)(1)(i), the EPA is incorporating by reference the EPA-approved Hawaii UST Program. Section 282.61(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved UST Program, although not incorporated by reference for enforcement purposes. Section 282.61(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope and therefore not incorporated by reference. Sections 282.61(d)(2) through (5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, Program Description, and Memorandum of Agreement, which are part of the State Application and part of the Hawaii UST Program under subtitle I of RCRA. These materials are available through <https://www.regulations.gov> by searching on EPA-R09-UST-2020-0258.

With respect to State statutes and regulations relating to variances, the EPA's approach merits further description. The EPA has previously stated that the variance provisions in Hawaii's UST Program may be used by the State to establish requirements that are broader in scope, but that the variance provisions may also be used by the State to establish requirements that are more stringent and federally enforceable. Because some requirements established through variances are expected to be federally enforceable, the EPA is not listing any variance provisions in 40 CFR 282.61(d)(1)(iii), the section consisting of broader in scope provisions that are not part of the approved UST Program. Instead, the EPA is listing these variance provisions in 40 CFR 282.61(d)(1)(ii), the section consisting of provisions that are part of the approved UST Program but not incorporated by reference. The EPA finds it appropriate to place the variance provisions here because the EPA prefers to include these variance provisions in the approved UST Program and because the EPA will not itself be using these provisions to grant variances, making it unnecessary to incorporate these provisions by reference. The EPA emphasizes that, although these variance provisions are not being incorporated by reference for EPA enforcement purposes, State requirements imposed through variances will be federally enforceable when such requirements are more stringent than the Federal requirements.

D. What is the effect of the EPA's codification of the federally approved Hawaii UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Hawaii, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference Hawaii's procedural and enforcement authorities, although they are listed in 40 CFR 282.61(d)(1)(ii).

E. What State provisions are not part of the codification?

As discussed above in section I.H. of this preamble, some provisions of Hawaii's UST Program are not part of the federally approved UST Program because they are broader in scope than the Federal UST Program. Where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference in 40 CFR part 282 for purposes of enforcement. *See* 40 CFR 281.12(a)(3)(ii). For reference and clarity, 40 CFR 282.61(d)(1)(iii) lists the Hawaii statutory and regulatory provisions which are broader in scope than the Federal program. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

The EPA's action merely approves and codifies Hawaii's revised UST Program requirements pursuant to RCRA section 9004 and does not impose additional requirements other than those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because it is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA; and
- Does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information 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). This final action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005, and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Michael Martucci,
Acting Regional Administrator,
Region 9.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 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.

2. Amend § 282.2 by revising paragraph (b)(9) to read as follows:

§ 282.2 Incorporation by reference.

* * * * *

(b) * * *

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105; Phone Number: (415) 947-8000.

* * * * *

3. Revise and republish § 282.61 to read as follows:

§ 282.61 Hawaii State-Administered Program.

(a) *History of the approval of Hawaii's program.* The State of Hawaii (Hawaii or State) is approved to administer and enforce an underground storage tank (UST) program in lieu of the Federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's Underground Storage Tank Program (UST Program), as administered by the Hawaii Department of Health (HDOH), was approved by the EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Hawaii

UST Program on September 25, 2002, and it was effective on September 30, 2002. A subsequent program revision received final approval from the EPA on March 7, 2022, and became effective on the same date. An amendment to that approval became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Hawaii has primary responsibility for administering and enforcing its federally approved UST Program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Hawaii must revise its approved UST Program to adopt new changes to the Federal subtitle I program which 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 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) *Final approval.* Hawaii has final approval for the following elements of its UST Program, originally submitted to the EPA on September 25, 2002, and approved effective September 30, 2002, and the program revisions approved by the EPA effective on March 7, 2022, and on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations--(i) Incorporation by reference.* The Hawaii materials cited in this paragraph (d)(1)(i), and listed in appendix A to this part, are incorporated by reference as part of the UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Hawaii statutes and regulations that are incorporated by reference in this paragraph

(d)(1)(i) from the Hawaii Department of Health, Kinau Hale, 1250 Punchbowl Street, Honolulu, HI 96813; Phone number: (808) 586-4400; website: <https://health.hawaii.gov/ust/>.

- (A) Hawaii Statutory Requirements Applicable to the Underground Storage Tank Program, dated February 18, 2020.
- (B) Hawaii Regulatory Requirements Applicable to the Underground Storage Tank Program, dated February 18, 2020.

(ii) *Legal basis.* The EPA considered the following statutes and regulations which provide the legal basis for the State's implementation of the UST Program. Although these statutes and regulations are part of the approved program, they are not being incorporated by reference for enforcement purposes and do not replace Federal authorities.

- (A) *Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks. (1) Section 342L-1, as to the definition of "complaint" insofar as it is necessary for enforcement purposes.*
- (2) Section 342L-1, as to the definition of "variance" insofar as it establishes a definition of the term for use in granting variances.
- (3) Section 342L-2, insofar as it directs the HDOH Director to administer Hawaii's UST Program.
- (4) Section 342L-3, insofar as it defines the HDOH Director's powers.
- (5) Section 342L-5, insofar as it allows for the granting of variances.
- (6) Section 342L-6, insofar as it establishes procedures for the granting of variances.
- (7) Section 342L-7, insofar as it grants inspection, monitoring, and other information-gathering authorities to the HDOH.
- (8) Section 342L-8, insofar as it establishes the HDOH's enforcement authority.
- (9) Section 342L-9, insofar as it provides emergency authority to the Hawaii governor and the HDOH Director.

- (10) Section 342L-10, insofar as it makes persons who violate the statutes and regulations in Hawaii's UST Program subject to penalties.
- (11) Section 342L-11, insofar as it allows the HDOH Director to impose administrative penalties for violations.
- (12) Section 342L-12, insofar as it grants the HDOH Director the authority to commence a civil action seeking injunctive and other relief.
- (13) Section 342L-12.5, insofar as it grants adversely affected persons the authority to intervene in civil enforcement actions.
- (14) Section 342L-13, insofar as it grants appeal rights to parties aggrieved by an order of the HDOH director.
- (15) Section 342L-15, insofar as it establishes the HDOH's obligations to make information available to the public and to protect confidential information.
- (16) Section 342L-17, insofar as it provides that Hawaii Revised Statutes, Chapter 342L (Chapter 342L) does not exclude or impair existing civil or criminal remedies.
- (17) Section 342L-18, insofar as it provides for enforcement by state and county authorities.
- (18) Section 342L-19, insofar as it provides that Chapter 342L does not affect the powers, duties, and functions vested in the HDOH under other laws.
- (19) Section 342L-20, insofar as it defines the relationship between Chapter 342L and laws, ordinances, and rules that are inconsistent.
- (20) Section 342L-21, insofar as it grants priority in courts to actions brought under Chapter 342L.
- (21) Section 342L-30(i), insofar as it establishes penalties for failure to comply with notification requirements.

(22) Section 342L-32.5, insofar as it prohibits the delivery, deposit, or acceptance of a regulated substance into an underground storage tank identified by the HDOH as ineligible for such delivery, deposit, or acceptance.

(23) Section 342L-50, insofar as it establishes definitions for the purpose of the HDOH's implementation of sections 342L-51 through 342L-53, which are not incorporated by reference.

(24) Section 342L-51, insofar as it requires the HDOH to establish a fund for responding to petroleum releases from USTs or UST systems.

(25) Section 342L-52, insofar as it provides the HDOH the authority to respond to suspected or confirmed petroleum releases from USTs or UST systems.

(26) Section 342L-53, insofar as it allows the HDOH to recover costs incurred from response or enforcement actions related to petroleum releases from USTs or UST systems.

(B) *Hawaii Administrative Rules, Chapter 11-280.1, Underground Storage Tanks. (1)*

Section 11-280.1-12, as to the definition of "variance" insofar as it establishes a definition of the term for use in granting variances.

(2) Section 11-280.1-66(d), insofar as it establishes criteria for the HDOH to use when approving corrective action plans.

(3) Section 11-280.1-66(e) and section 11-280.1-67 insofar as they establish requirements to facilitate public participation in the corrective action process.

(4) Section 11-280.1-112 insofar as it grants the HDOH Director the authority to require the placement of funds into a trust.

(5) Section 11-280.1-332, insofar as it allows the HDOH to grant variances.

(6) Section 11-280.1-333, insofar as it establishes procedures for the granting of variances.

- (7) Section 11-280.1-421, insofar as it describes the purpose of the subchapter of Hawaii's UST regulations that establishes an enforcement program.
- (8) Section 11-280.1-422, insofar as it provides for the issuance of field citations for violations of Hawaii's UST requirements.
- (9) Section 11-280.1-429, insofar as it prohibits the delivery, deposit, or acceptance of a regulated substance into ineligible USTs and establishes procedures to enforce the prohibition.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the Hawaii UST Program are broader in scope than the Federal program. Therefore, these provisions are not part of the approved UST Program and are not incorporated by reference in this section:

- (A) *Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks.* (1) Section 342L-1 is broader in scope as to the definition of "regulated substance" insofar as it allows the HDOH to regulate substances that are not regulated under the Federal definition.
- (2) Section 342L-1 is broader in scope as to the definition of "shoreline" insofar as it defines the term for the purposes of the shoreline permit prohibition in section 342L-4.5.
- (3) Section 342L-4 is broader in scope insofar as it establishes a permitting program.
- (4) Section 342L-4.5 is broader in scope insofar as it restricts the permitting of new USTs within one hundred yards of the shoreline.
- (5) Section 342L-14 is broader in scope insofar as it grants the HDOH Director authority to establish fees for the registration of USTs or UST systems.
- (6) Section 342L-16 is broader in scope insofar as it provides liability protections for HDOH personnel.

(7) Section 342L-23 is broader in scope insofar as it requires the HDOH Director to create and maintain a directory of UST service providers.

(8) Section 342L-30(g) is broader in scope insofar as it places notification requirements on any person selling an underground storage tank or tank system.

(9) Section 342L-30(h) is broader in scope insofar as it places notification requirements on any person who deposits regulated substances into an underground storage tank or tank system.

(10) Section 342L-31 is broader in scope insofar as it requires owners and operators of USTs or UST systems to obtain permits.

(11) Section 342L-61 is broader in scope insofar as it establishes a fuel tank advisory committee.

(12) Section 342L-62 is broader in scope insofar as it defines the duties of the fuel tank advisory committee.

(B) *Hawaii Administrative Rules, Chapter 11-280.1, Underground Storage Tanks. (1)*

Section 11-280.1-12 is broader in scope as to the definition of “regulated substance” insofar as it allows the Hawaii UST Program to regulate substances that are not regulated under the Federal program.

(2) Section 11-280.1-21(b) and (c) are broader in scope insofar as they require that all UST systems be upgraded to meet secondary containment requirement within the specified timeframe.

(3) Section 11-280.1-23 is broader in scope insofar as it requires hazardous substance USTs installed prior to October 13, 2015, to be secondarily contained, with no exceptions.

(4) Section 11-280.1-34(a)(1) is broader in scope insofar as it requires notification for a change in service as are Sections 11-280.1-34(a)(2), (a)(3), (a)(4), (a)(5), (a)(6),

(a)(7), (a)(9) and (a)(10) insofar as they establish notification requirements beyond the scope of the Federal program.

(5) Section 11-280.1-42 is broader in scope insofar as it requires hazardous substance USTs installed prior to October 13, 2015, to use interstitial monitoring, with no exceptions.

(6) Section 11-280.1-53(b)(2) and section 11-451-6(b)(4) are broader in scope insofar as they establish a “reportable quantity” threshold for trichloropropane of 10 lbs.

(7) Section 11-280.1-61.1 is broader in scope insofar as it requires the posting of signs around the perimeter of contaminated areas, as the HDOH determines to be appropriate.

(8) Section 11-280.1-65.1 is broader in scope insofar as it requires written notification of confirmed releases to members of the public directly affected by the release.

(9) Sections 11-280.1-323 to 11-280.1-331 are broader in scope insofar as they require permits for the installation and operation of USTs.

(10) Sections 11-280.1-334 is broader in scope insofar as it establishes requirements regarding the maintenance of permits and variances.

(11) Section 11-280.1-335 is broader in scope insofar as it establishes fees for permits and variances.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed by a Hawaii Deputy Attorney General on September 13, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under 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 in the application on October 8, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description dated August 2018, and as amended in October 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under 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 HDOH, signed by the EPA Regional Administrator on April 3, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Amend appendix A to part 282 by revising the entry for Hawaii 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:

Hawaii Revised Statutes, Chapter 342L, Underground Storage Tanks:

Section 342L-1 Definitions (except “complaint” insofar as it establishes a definition for enforcement purposes; “regulated substance” insofar as it includes other substances as designated by the Hawaii Department of Health (HDOH); “shoreline” insofar as it relates to UST location requirements; and “variance” insofar as it establishes a definition for the purpose of granting variances).

Section 342L-7.5 Record maintenance.

Section 342L-30 Notification requirements (except paragraphs (g) and (h) of this section insofar as those provisions establish notification requirements for sellers of USTs or UST systems and for any person who deposits regulated substances into a UST or UST system; and except for paragraph (i) of this section insofar as it grants the HDOH 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.

(b) The regulatory provisions include:

Hawaii Administrative Rules, Chapter 11-280.1, Underground Storage Tanks:

Section 11-280.1-10 Applicability.

Section 11-280.1-11 Installation requirements for partially excluded UST systems.

Section 11-280.1-12 Definitions (except “regulated substance” insofar as the HDOH can designate other substances; and “variance” insofar as the term is defined for the purpose granting variances).

Section 11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice.

Section 11-280.1-20 Performance standards for UST systems.

Section 11-280.1-21 Upgrading of UST systems (except (b) and (c) of this section insofar as they establish a date for removal or upgrade tanks and piping to meet secondary containment requirements).

Section 11-280.1-23 Tank and piping design for hazardous substance UST systems (insofar as it applies to hazardous substance UST systems installed on or after October 13, 2015).

Section 11-280.1-24 Secondary containment design.

Section 11-280.1-25 Under-dispenser containment.

Section 11-280.1-26 Performance standards and design for UST systems--codes of practice.

Section 11-280.1-30 Spill and overfill control.

Section 11-280.1-31 Operation and maintenance of corrosion protection.

Section 11-280.1-32 Compatibility.

Section 11-280.1-33 Repairs allowed.

Section 11-280.1-34 Notification, reporting, and recordkeeping (except “change-in-service” in (a)(1) insofar as it requires notification for a change-in-service and except (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(9) and (a)(10) insofar as they establish notification requirements beyond the scope of the Federal program).

Section 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.

Section 11-280.1-36 Periodic operation and maintenance walkthrough inspections.

Section 11-280.1-37 Periodic inspection and maintenance of under-dispenser containment.

Section 11-280.1-38 General operating requirements--codes of practice.

Section 11-280.1-40 General requirements for all UST systems.

Section 11-280.1-41 Requirements for petroleum UST systems.

Section 11-280.1-42 Requirements for hazardous substance UST systems (insofar as it applies to hazardous substance UST systems installed on or after October 13, 2015).

Section 11-280.1-43 Methods of release detection for tanks.

Section 11-280.1-44 Methods of release detection for piping.

Section 11-280.1-45 Release detection recordkeeping.

Section 11-280.1-46 Release detection--codes of practice.

Section 11-280.1-50 Reporting of suspected releases.

Section 11-280.1-51 Investigation of off-site impacts.

Section 11-280.1-52 Release investigation and confirmation steps.

Section 11-280.1-53 Reporting and cleanup of spills and overfills (except “as determined in compliance with section 11-451-6” in (b)(2) insofar as the requirement in Section 11-451-6 to report a release of trichloropropane is broader in scope than the Federal release reporting requirements).

Section 11-280.1-60 General.

Section 11-280.1-61 Immediate response actions.

Section 11-280.1-62 Initial abatement measures and site assessment.

Section 11-280.1-63 Initial site characterization.

Section 11-280.1-64 Free product removal.

Section 11-280.1-65 Investigations for soil and groundwater cleanup.

Section 11-280.1-65.2 Release response reporting.

Section 11-280.1-65.3 Site cleanup criteria.

Section 11-280.1-66 Corrective action plan (except (d) insofar as it establishes criteria for HDOH use in the approval of corrective action plans; and (e) insofar as it establishes public participation requirements).

Section 11-280.1-70 Temporary closure.

Section 11-280.1-71 Permanent closure and changes-in-service.

Section 11-280.1-72 Assessing the site at closure or change-in-service.

Section 11-280.1-73 Applicability to previously closed UST systems.

Section 11-280.1-74 Closure records.

Section 11-280.1-75 Closure--codes of practice.

Section 11-280.1-90 Applicability.

Section 11-280.1-92 Definition of terms.

Section 11-280.1-93 Amount and scope of required financial responsibility.

Section 11-280.1-94 Allowable mechanisms and combinations of mechanisms.

Section 11-280.1-95 Financial test of self-insurance.

Section 11-280.1-96 Guarantee.

Section 11-280.1-97 Insurance and risk retention group coverage.

Section 11-280.1-98 Surety bond.

Section 11-280.1-99 Letter of credit.

Section 11-280.1-102 Trust fund.

Section 11-280.1-103 Standby trust fund.

Section 11-280.1-104 Local government bond rating test.

Section 11-280.1-105 Local government financial test.

Section 11-280.1-106 Local government guarantee.

Section 11-280.1-107 Local government fund.

Section 11-280.1-108 Substitution of financial assurance mechanisms by owner or operator.

Section 11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance.

Section 11-280.1-110 Reporting by owner or operator.

Section 11-280.1-111 Recordkeeping.

Section 11-280.1-113 Release from the requirements.

Section 11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

Section 11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds.

Section 11-280.1-200 Definitions.

Section 11-280.1-210 Participation in management.

Section 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.

Section 11-280.1-230 Operating an underground storage tank or underground storage tank system.

Section 11-280.1-240 General requirement for all UST systems.

Section 11-280.1-241 Designation of Class A, B, and C operators.

Section 11-280.1-242 Requirements for operator training.

Section 11-280.1-243 Timing of operator training.

Section 11-280.1-244 Retraining.

Section 11-280.1-245 Documentation.

(c) Copies of the Hawaii statutes and regulations that are incorporated by reference are available from the State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96801; Phone number: (808) 586-4400; website: <https://health.hawaii.gov/ust/>.

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