

**§ 180.431 Clopyralid; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following commodities:

Commodity	Parts per million
* * *	*
Beet, garden, tops .....	3.0
Beet, garden, roots .....	4.0
Brassica, head and stem, subgroup .....	2.0
Canola, meal .....	6.0
Canola, seed .....	3.0
* * *	*
Cattle, liver .....	3.0
* * *	*
Cattle, meat byproducts, except liver .....	36.0
* * *	*
Corn, pop, grain .....	1.0
Corn, pop, stover .....	10.0
Corn, sweet, forage .....	7.0
Corn, sweet, kernel plus cob with husks removed .....	1.0
Corn, sweet, stover .....	10.0
Crambe, seed .....	3.0
Cranberry .....	4.0
* * *	*
Flax, meal .....	6.0
Flax, seed .....	3.0
Fruit, stone, group .....	0.5
* * *	*
Goat, liver .....	3.0
* * *	*
Goat, meat byproducts, except liver .....	36.0
* * *	*
Hop, dried cones .....	5.0
* * *	*
Horse, liver .....	3.0
* * *	*
Horse, meat byproducts, except liver .....	36.0
Milk .....	0.2
* * *	*
Mustard, greens .....	5.0
Mustard, seed .....	3.0
* * *	*
Plum, prune, dried .....	1.5
* * *	*
Rapeseed, seed .....	3.0
Rapeseed, forage .....	3.0
* * *	*
Sheep, liver .....	3.0
* * *	*
Sheep, meat byproducts, except liver .....	36.0
* * *	*
Spinach .....	5.0
Strawberry .....	1.0
* * *	*
Turnip, roots .....	1.0
Turnip, tops .....	4.0
* * *	*

(b) *Section 18 emergency exemptions.*  
[Reserved]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 281**

[FRL-7381-6]

**Hawaii; Final Approval of State Underground Storage Tank Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on the State of Hawaii's application for final approval.

**SUMMARY:** The State of Hawaii has applied for approval of its Underground Storage Tank Program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Hawaii's application and has reached a final determination that Hawaii's Underground Storage Tank Program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is granting final approval to the State of Hawaii to operate its Underground Storage Tank Program for petroleum and hazardous substances.

**EFFECTIVE DATE:** Final approval for the State of Hawaii's Underground Storage Tanks Program shall be effective on September 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norwood Scott, Underground Storage Tanks Program Office, U.S. EPA, Region 9, 75 Hawthorne Street (WST-8), San Francisco, California 94105, Telephone: (415) 972-3373.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to approve state Underground Storage Tank Programs to operate in the State in lieu of the Federal Underground Storage Tank (UST) Program. To qualify for final authorization, a state's Program must: (1) Be "no less stringent" than the Federal Program for the seven elements set forth at RCRA Section 9004(a)(1) through (7); and (2) provide for adequate enforcement of compliance with the UST standards of RCRA Section 9004(a). Note that RCRA Sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with Programs approved by the EPA under RCRA Section 9004. Thus, the Agency retains its authority under RCRA Sections 9005

and 9006, 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, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Moreover, authorization of a state Program is a prospective action only and an authorized state Program only operates in lieu of the Federal Program as of the effective date of the authorization. The Agency may undertake enforcement of the Federal requirements for violations of those Federal requirements which occurred prior to the effective date of authorization of the state's Program. In this case, authorization of the Hawaii UST Program will be effective on September 30, 2002.

On May 23, 2001, the State of Hawaii submitted an official application to obtain final program approval to administer the Underground Storage Tank Program for petroleum and hazardous substances. On October 5, 2001, the EPA published a tentative decision announcing its intent to grant Hawaii final approval. Further background on the tentative decision to grant approval appears at 66 FR 50963-50966, October 5, 2001.

Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application. The EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. The hearing was held at Kawananakoa Middle School in Honolulu, Hawaii on November 13, 2001.

**B. Significant Public Comments and EPA's Responses**

Written comments regarding the EPA's approval of Hawaii's Underground Storage Tank Program were received during the comment period from EnviroWatch, Inc. Oral comments regarding the EPA's approval of Hawaii's Underground Storage Tank Program were received during the public hearing from Carroll Cox, President of EnviroWatch, Inc., and Joe Ryan, a resident of Waimanalo.

Additionally, in April 2001, prior to publication of EPA's tentative decision to authorize Hawaii's Underground Storage Tank Program, EPA received a Petition To Withdraw Hawaii Certification and Title VI Complaint of Discriminatory Acts (Petition to

Withdraw) challenging the administration and enforcement of environmental programs by the State of Hawaii and seeking withdrawal of authorization for all environmental programs. We have taken into consideration comments in the Petition relating to the Hawaii Underground Storage Tank Program in taking today's action. Today's action is not a final determination on the merits of the Petition to Withdraw. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* EPA received comments relating to the Hawaii Department of Health's (HDOH) implementation of other programs for which Hawaii has been delegated authority by EPA. The comments generally asserted that HDOH has a track record of being unable to properly enforce other federally delegated programs and, thus, that the State would not adequately enforce its underground storage tank program. Specific examples cited included Hawaii's enforcement of the Clean Water Act, including the State's National Pollutant Discharge Elimination System (NPDES) program, Hawaii's investigation into a sewage dumping incident, and the purported failure of the State's Attorney General to give priority to environmental enforcement. The Petition to Withdraw also identified the State's economic condition and the reduction in force of State employees responsible for inspections and enforcement as a reason why the State would not be able to administer and enforce the UST program according to Federal guidelines and rules.

*Response:* Each environmental program is unique and must be evaluated in light of the particular Federal and state requirements applicable to that program. Among other things, programs differ significantly in the numbers and types of pollutants regulated; the number, size and type of facilities which are regulated; the complexity and scope of regulatory requirements; regulatory mechanisms (for example, use of permits and prohibitions); tools for assessing compliance (e.g., inspections, self-monitoring and self-reporting); and enforcement options. Moreover, different programs vary in funding levels and sources, and staffing levels (both number of staff and required qualifications).

Requirements applicable to EPA's authorization of Hawaii's UST program are found generally at 40 CFR part 281. These requirements include criteria for determining whether a state's program is "no less stringent than" the

corresponding Federal program. See 40 CFR 281.30 through 281.39. These requirements also include criteria for determining whether a state can adequately enforce its program. See 40 CFR 281.40 through 281.43. EPA has reviewed and evaluated Hawaii's UST authorization application in light of the criteria set forth in 40 CFR part 281. EPA has determined that Hawaii's UST program meets the criteria set forth in 40 CFR part 281 and has determined that authorization of this program is appropriate in light of those criteria.

With respect to HDOH's performance in enforcing its UST program, HDOH began implementation of its field citation program in May 2000. Field citations are issued for easily verifiable and correctable violations of Hawaii's UST rules, and involve lower penalty amounts than are assessed in traditional administrative enforcement actions. Since May 2000, HDOH has conducted 476 state-led field citation inspections and has issued 143 field citations assessing total penalties of \$133,450. To date, 122 facilities have paid their assessed penalty for a total of \$102,565 in penalties received by HDOH.

Over the past year, HDOH initiated enforcement efforts (e.g., warning letters and proposed orders) against recalcitrant owners and operators at approximately 220 facilities who had failed to conduct response activities to address releases that occurred at their facilities prior to 1997. As a result, many of these facilities are currently conducting appropriate release response activities, including site assessments and cleanup. Work has been completed at approximately 25 percent of these facilities and the cases are now closed.

With respect to the portion of the comment related to HDOH's enforcement resources, in Fiscal Year (FY) 2003 (October 1, 2002–September 30, 2003) Hawaii's UST and LUST program budgets are \$420,402.00 and \$673,551.00 respectively. HDOH has four full time UST inspector positions and has a goal of conducting a minimum of 400 UST facility inspections during FY2003. With approximately 1,100 operating UST facilities, and 400 UST facilities inspected annually, each of these facilities would be inspected at least once every three years to ensure compliance with State UST regulations. In addition to an aggressive FY2003 inspection schedule, HDOH identified ten administrative enforcement actions against non-compliant facilities in FY2002. Three of these cases have settled while an additional eight are in development or pending.

With respect to the comments related to Hawaii's implementation and enforcement of the Clean Water Act, these are the same comments which were raised in the Petition. In response to the Petition, EPA decided to change its schedule of state program audits to perform an audit of Hawaii's NPDES program earlier than originally scheduled. Pursuant to the audit, EPA reviewed Hawaii's statutory authorities as well as enforcement mechanisms, and the audit raised some concerns, particularly related to enforcement. EPA is working with the State to address those concerns. We are also reviewing the issues raised in the Petition, and will respond directly to the Petitioner on those issues.

2. *Comment:* EPA received comments expressing the concern that the HDOH was unable to ensure that other Hawaii State agencies complied with UST program requirements, including the Federal deadline for upgrading existing tanks (December 22, 1998, pursuant to 40 CFR 280.21), (the corresponding State provision is found at Hawaii Administrative Rules [HAR] 11–281–18, and sets a deadline of January 28, 2000, the effective date of the regulations). These comments focused generally on the failure of HDOH to identify or require closure of an UST by the Hawaii Department of Land and Natural Resources (HDLNR) at a pumphouse near Pearl Harbor's Richardson Field.

*Response:* The HDOH has the legal authority to bring an enforcement action against another State agency and, in fact, HDOH has taken enforcement action against other State agencies. The EPA is satisfied that appropriate enforcement actions can and will be taken by HDOH against other non-complying State of Hawaii agencies when necessary. HDOH began its UST field citation program in April 2000. Since that time, HDOH has inspected 13 State facilities and has issued field citations to five of those facilities. The field citations assessed penalties ranging from a low of \$150 up to a high of \$1,750. EPA is confident that HDOH treats all tank owners and operators equally with respect to conducting inspections and taking enforcement action, including State agencies.

EPA has reviewed the situation relating to the UST located at the pumphouse near Pearl Harbor's Richardson Field and is satisfied with HDOH's actions with respect to this UST. Given the dates of service of this UST, which was apparently taken out of service in 1960 prior to the 1962 transfer of the land to HDLNR, HDLNR would not ordinarily have the responsibility for closure of this UST. Under Section

9001(3)(B) of RCRA, 42 U.S.C. 6991(3)(B), for USTs no longer in service after November 8, 1984, the "owner," who would ordinarily be responsible for closure, is the entity who owned the UST immediately before it was taken out of service. See also Hawaii Revised Statutes (HRS) Chapter 342-L1.

3. *Comment:* EPA received comments expressing concern that the State has implemented its UST program in a discriminatory manner and that the State does not have an adequate environmental equity policy.

*Response:* These comments are similar to the issues raised in the Petition To Withdraw Hawaii Certification and Title VI Complaint of Discriminatory Acts (Petition to Withdraw), which was rejected by EPA's Office of Civil Rights (OCR) in October of 2001. While the comments received on EPA's tentative decision to authorize Hawaii's UST program did not provide specifics with respect to these concerns, the Petition to Withdraw specifically referred to the incident relating to mercury contamination emanating from the pumphouse near Richardson Field with respect to the allegations of discriminatory conduct by the State.

As set forth above in response to Comment 2 with respect to HDOH's actions relating to the UST at the pumphouse near Richardson Field, EPA has reviewed those actions and is satisfied that HDOH has acted appropriately. No other specific examples of HDOH acting in a discriminatory manner that specifically relate to HDOH's implementation of the UST program were identified by the comments or the Petition to Withdraw.

With respect to today's decision to authorize Hawaii's UST Program, EPA must ensure that Hawaii has an adequate UST enforcement program. While EPA does not typically review environmental justice policies in the context of determining whether a state has an adequate UST enforcement program, EPA notes that, on January 2, 2002, the HDOH Environmental Health Administration issued an Environmental Equity Policy. This policy confirms that HDOH will "through the implementation of federal and state environmental laws, rules, policies, and programs, ensure the fair and equitable treatment of all persons as it evaluates and addresses the risks and consequences associated with environmental pollution."

4. *Comment:* EPA received comments questioning the State's ability and "political strength" to enforce its UST requirements at Federal facilities.

Additionally, questions were raised concerning the continued role of EPA with respect to Federal facility enforcement in the State, after authorization of the UST Program.

*Response:* HDOH conducts inspections of military sites and has issued UST field citations to the military and other Federal facilities for violations of State UST requirements. These Federal facilities have returned to compliance as directed by the citations issued by HDOH. However, disputes have arisen between the facilities and HDOH regarding whether penalties assessed by the State must be paid by Federal facilities and whether the Federal government's sovereign immunity with respect to such penalties has been waived. This dispute regarding the waiver of sovereign immunity with respect to penalties assessed by state agencies is not limited to Hawaii, but is a national issue, affecting all state UST programs. The ability of HDOH to pursue violations and require compliance is not in question.

EPA is continuing to offer assistance to the states, including Hawaii, for Federal facility UST inspections. As to EPA's role after authorization of the program, where appropriate, EPA will continue to exercise its enforcement authority, including the assessment of penalties, since EPA's administrative penalty authority against Federal UST facilities is not in dispute. EPA-lead inspections of Federal UST facilities are conducted jointly with HDOH. In addition, all inspection and enforcement related information gathered in connection with Federal UST facilities is shared between EPA and HDOH.

5. *Comment:* EPA received comments expressing concern regarding the practical ability of citizens to seek a review of Hawaii's administration of the State's UST Program, once it has been delegated. The commenter was concerned that requests for review of the State's programs are referred to the State, rather than being handled by EPA. The commenter suggested that certain safeguards be implemented in order to ensure adequate review of such requests. These suggestions included requiring administrative review of the State Program upon the filing of a citizen's complaint and including possible sanctions against the State if it is not adequately implementing its Program.

*Response:* The process for withdrawal of approval of authorized state UST programs is set forth at 40 CFR 281.60 and 281.61. 40 CFR 281.61(b) cross-references the procedures set forth for withdrawal of approval of authorized

state hazardous waste programs at 271.23(b) and (c). Both 40 CFR 281.61(b) and 271.23(b) allow interested persons to petition EPA to commence proceedings to withdraw approval of these state programs. EPA must respond in writing to any such petitions. 40 CFR 271.23(b)(1). If EPA determines that proceedings to withdraw approval of an authorized UST program are appropriate, either in response to an interested person's petition or on the Agency's own initiative, EPA may order commencement of such proceedings. Petitions to withdraw approval of authorized state programs are not referred to the affected state for a decision. The only sanction specifically provided in the regulations is withdrawal of the program. Neither the statute nor the regulations provide for sanctions in addition to withdrawal of program approval against a state that is not adequately implementing its UST Program.

6. *Comment:* EPA received comments criticizing EPA's criteria for deciding whether or not to hold a public hearing on EPA's tentative determination to authorize Hawaii's UST Program. The commenter asserted that the decision whether to hold a public hearing on that tentative determination should not be based on whether there was "sufficient" public interest, since, the commenter argued, that standard was vague and unfair.

*Response:* The standard for determining whether a public hearing should be held on EPA's tentative decision to authorize a state program is set forth at 40 CFR 281.50(e)(4), which indicates that, if "insufficient public interest is expressed," EPA may cancel the public hearing. In any event, EPA held a public hearing on its tentative decision to authorize Hawaii's UST Program on November 13, 2001. The hearing was held at Kawanakoa Middle School in Honolulu, Hawaii. Thus, regardless of the standard used to determine whether or not a hearing should be held, the public did in fact have an opportunity to attend a public hearing on EPA's tentative decision to authorize Hawaii's UST Program and the concerns raised by these comments are moot.

7. *Comment:* EPA received comments expressing concern over whether or not EPA would continue to oversee Hawaii's implementation of its UST Program after authorization. These comments also requested clarification of the timing of approval of Hawaii's UST program and the standards used to determine whether or not to approve authorization.

*Response:* The effective date of today's decision to authorize Hawaii's UST Program is September 30, 2002. The criteria used to evaluate Hawaii's UST Program are set forth generally at 40 CFR Part 281. These regulations can be found on the web at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr281\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr281_00.html).

Pursuant to 40 CFR 281.24, at the time of approval of a state's application for authorization of its UST program, a Memorandum of Agreement (MOA) must be signed by the Regional Administrator and the appropriate official of the state lead agency. The MOA contains proposed areas of coordination between the state and EPA as well as a delineation of separate state and Federal roles and responsibilities. These roles and responsibilities include the following areas: Enforcement, compliance monitoring, EPA oversight, and sharing and reporting of information. In the MOA entered into between EPA and the State of Hawaii with respect to implementation of Hawaii's UST Program, EPA has assumed an oversight role with respect to the State's program. This oversight role will include an annual review of the State's Program in order to assist the State in implementing its Program, and to allow EPA to report to the President, the Congress and the public on the achievements of the State's UST Program. The MOA also envisions that EPA and the State will coordinate regarding desirable technical support that EPA may provide to the State, and regarding targeting of joint efforts to prevent and mitigate environmental problems associated with the improper management of USTs.

8. *Comment:* EPA received comments expressing concerns regarding Hawaii's UST Program and whether or not the Program was as stringent as the Federal UST program.

*Response:* EPA has determined that Hawaii's application for authorization of its State UST Program meets the criteria for approval set forth at 40 CFR part 281. As part of this determination, EPA has determined that Hawaii's UST Program is "no less stringent" than the Federal UST program in accordance with 40 CFR part 281, subpart C. EPA has also determined that the State has provided for an adequate enforcement program pursuant to 40 CFR part 281, subpart D, and has provided for public participation in the enforcement process in accordance with 40 CFR 281.42.

With respect to EPA's determination that Hawaii's UST program is "no less stringent" than the Federal UST program, in its **Federal Register** notice announcing its tentative decision to

authorize Hawaii's UST Program, EPA specifically identified certain areas of the Hawaii program which EPA considers broader in scope than the Federal UST program. See 66 FR 50964–50965 (October 5, 2001). While these "broader in scope" provisions are enforceable by the State, they are not part of the authorized program and are thus not enforceable by EPA. EPA has determined that the remaining aspects of the State's UST Program are as stringent or more stringent than the Federal program. EPA notes that Hawaii's deadline for UST owner/operators to upgrade their existing USTs, found at Hawaii Administrative Rules (HAR) 11–281–18, was January 28, 2000, the effective date of the Hawaii regulations. The Federal deadline for upgrading existing tanks, found at 40 CFR 280.21, was December 22, 1998. For USTs which met Hawaii's deadline but failed to meet the Federal deadline, Hawaii and EPA, through the MOA, have agreed that EPA will assume all related enforcement responsibilities.

As explained above, authorization of a state Program is a prospective action only and an authorized state Program only operates in lieu of the Federal Program as of the effective date of the authorization. The Agency may undertake enforcement of the Federal requirements for violations of those Federal requirements which occurred prior to the effective date of authorization of the state's Program. Since the Hawaii UST Program operates in lieu of the Federal UST Program as of September 30, 2002, the Federal deadline for upgrading existing tanks, found at 40 CFR 280.21, December 22, 1998, is not affected by this authorization. EPA may continue to undertake enforcement of violations of the Federal regulation, 40 CFR 280.21, occurring between December 22, 1998 and September 30, 2002. EPA may also enforce the State regulation, HAR 11–281–18, with respect to tanks that continue to be in violation of the upgrade requirement on or after September 30, 2002.

With the exception of those provisions deemed "broader in scope" than the Federal program, the Hawaii program being authorized by today's action consists of the following statutory and regulatory provisions: HRS 128D–4; HRS 342L–1 through 342L–53; and HAR 11–281–01 through 11–281–131.

EPA has also determined that the State has provided for public participation in the enforcement process in accordance with 40 CFR 281.42 and that the State's enforcement program is "adequate" in terms of the factors set forth at 40 CFR part 281, subpart D.

Based on these determinations, EPA is authorizing the State's UST Program pursuant to today's rulemaking.

9. *Comment:* The Petition to Withdraw asserted that the State had denied access to public documents in violation of the Hawaii Uniform Information Practices Act (HRS 92F–1 *et seq.*) (UIPA).

*Response:* EPA notes that the UIPA contains provisions allowing persons aggrieved by denial of access to State governmental records to compel disclosure of the requested information. See HRS 92F–15.

10. *Comment:* EPA received comments requesting information on how farm tanks and agricultural businesses using USTs are regulated and how spills from such systems would be addressed.

*Response:* The Federal UST requirements exclude from the definition of "underground storage tank" or "UST" any "[f]arm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes." 40 CFR 280.12. The Federal regulations define "farm tank" as "a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements." 40 CFR 280.12. The Federal definition of "farm tank" also makes clear that a farm tank must be located on the farm property and that the term "farm" includes fish hatcheries, rangeland and nurseries with growing operations. 40 CFR 280.12. Hawaii's definitions of "underground storage tank" or "UST", "farm" and "farm tank" track the Federal definitions but also indicate that a farm tank must be used only for farm related purposes. See HAR 11–281–03. Thus, EPA has determined that Hawaii's UST Program is broader in scope than the Federal UST program to the extent that Hawaii regulates 1,100 gallon capacity or less USTs storing motor fuel on farms when such USTs are used for non-commercial purposes other than farming purposes.

Spills from tanks which are excluded from the definition of "underground storage tank" or "UST" under Hawaii's UST Program would not be addressed using the corrective action authorities set forth at HAR 11–281 Subchapter 7. However, the State may have additional authorities available to it to address cleanup of such spills under certain circumstances. For instance, HRS 128D–4 provides the State with specific release response and enforcement authorities in order to address certain releases of hazardous substances. Other State and Federal authorities may also

exist, depending on the circumstances associated with any particular spill.

### C. Decision

I conclude that the State of Hawaii's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Hawaii is granted final approval to operate its Underground Storage Tank Program for petroleum and hazardous substances. The State of Hawaii, as of the effective date of this rule, has the responsibility for managing all regulated underground storage tank facilities within its border and carrying out all aspects of the Underground Storage Tank Program where the EPA will have regulatory authority. Hawaii also has primary enforcement responsibility, although the EPA retains the right to conduct enforcement actions under section 9006 of RCRA and to gather information under section 9005 of RCRA.

### D. Administrative Requirements

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal Governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Local, and Tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal Governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must

provide for notifying potentially affected small governments, enabling Officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local or Tribal Governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. Hawaii's participation in the EPA's State Program approval process under RCRA Subtitle I is voluntary. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own and/or operate underground storage tanks, they are already subject to the regulatory requirements under the existing State requirements that the EPA is now approving and, thus, are not subject to any additional significant or unique requirements by virtue of this action. Thus, the requirements of section 203 of the UMRA also do not apply to today's rule.

#### *Regulatory Flexibility Act (RFA) (as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that own and/or operate underground storage tanks are already subject to the State underground storage tank requirements which the EPA is now approving. This action merely approves for the purpose of RCRA Section 9004 those existing State requirements.

#### *Submission to Congress and the Comptroller General*

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 rule 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 of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

#### *Compliance With Executive Order 13045 (Children's Health)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on

health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

*Compliance With Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by Tribal Officials in the development of regulatory policies that have Tribal implications.” “Policies that have Tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.”

This rule does not have Tribal implications. There are no federally-recognized Indian tribes within the State of Hawaii. The authorization of Hawaii’s UST program will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Even if Indian Country existed within the State, Hawaii would not be approved to implement the RCRA Underground Storage Tank Program in Indian Country and this action would have no effect on the Underground Storage Tank Program that the EPA would implement in Indian Country within the State. Thus, Executive Order 13175 does not apply to this rule.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and Local Officials in the development of regulatory policies that have Federalism implications.” “Policies that have Federalism implications” is defined in the Executive Order to include regulations that have “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.”

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and Local Governments, or EPA consults with State and Local Officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and Local Officials early in the process of developing the proposed regulation.

This action does not have Federalism implications. It will not have a substantial direct effect on 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, as specified in Executive Order 13132, because it affects only one state. This action simply provides the EPA approval of Hawaii’s voluntary proposal for its State Underground Storage Tank Program to operate in lieu of the Federal Underground Storage Tank Program in that State. Thus, the requirements of Section 6 of the Executive Order do not apply.

*National Technology Transfer and Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*Executive Order 13211 (Energy Effects)*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects in 40 CFR Part 281**

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

**Authority:** This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: September 13, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**Universal Service**

*CFR Correction*

In Title 47 of the Code of Federal Regulations, Parts 40 to 69, revised as of October 1, 2001, § 54.403 is corrected on page 114 by adding paragraph (c) to read as follows:

**§ 54.403 Lifeline support amount.**

\* \* \* \* \*

(c) Lifeline support for providing toll limitation shall equal the eligible telecommunications carrier’s incremental cost of providing either toll blocking or toll control, whichever is selected by the particular consumer.

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