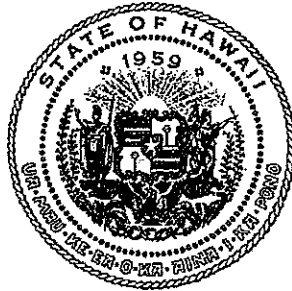


**REPORT TO THE TWENTY-SIXTH LEGISLATURE
2011 REGULAR SESSION**

**REPORT ON THE IMPACT OF THE IMPORTANT AGRICULTURAL LAND
QUALIFIED AGRICULTURAL COST TAX CREDIT AND A QUANTITATIVE AND
QUALITATIVE ASSESSMENT OF THE IMPACT OF THE LOAN GUARANTY
PROGRAM**

IN RESPONSE TO ACT 233, SESSION LAWS OF HAWAII 2008



**JOINTLY SUBMITTED BY THE
DEPARTMENT OF AGRICULTURE AND THE
DEPARTMENT OF TAXATION**

DECEMBER 2010



IMPORTANT AGRICULTURAL LAND QUALIFIED AGRICULTURAL COST TAX CREDIT

Legislative Background

Act 233, Session Laws of Hawaii 2008, requires that:

“The department of agriculture, in consultation with the department of taxation, shall annually determine the information necessary to provide a quantitative and qualitative assessment of the outcomes of the tax credit”.

“The department of agriculture, in consultation with the department of taxation, shall annually submit a report evaluating the effectiveness of the tax credit. The report shall include but not be limited to findings and recommendations to improve the effectiveness of the tax credit to further encourage the development of agricultural businesses”.

“The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, regarding the quantitative and qualitative assessment of the impact of the important agricultural land qualified agricultural cost tax credit”.

For purposes of this report, we consider the second and third paragraphs to be the same requirement.

Current Status of Important Agricultural Lands Designation:

Alexander and Baldwin, Inc. (A&B) is the first and only landowner thus far to dedicate lands as Important Agricultural Lands (IAL) through the Land Use Commission process. A&B has designated over 27,000 acres on Maui which extend from Maalaea, Kahului, Paia, Haliimaile to Kihei and are mostly in sugar cane production, with some lands in seed corn and pasture. On Kauai, their 3,773 acres designated as IAL are located in Lawai and Hanapepe and currently are used for coffee, seed corn, rice, taro and pasture.

Description of the Agricultural Cost Tax Credit

The tax credit may be claimed in taxable years beginning after May 31, 2009. The Hawaii Department of Agriculture is to certify credits up to \$7,500,000 annually. A tax credit can be claimed for costs such as roads or utilities, agricultural processing facilities, water wells, reservoirs, dams, pipelines, agricultural housing, feasibility studies, legal and accounting services, and equipment.

Outcomes and Effectiveness of the Agricultural Cost Tax Credit

A taxpayer may claim the agricultural cost tax credit only to the extent that eligible costs have been certified by the Department of Agriculture. As of December 1, 2010, the Department of Agriculture has not certified costs for any taxpayer. Once eligible costs have been certified, a taxpayer would become eligible to claim a credit of twenty-five per cent of the lesser of the following in the first year: (A) the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or (B) \$625,000.

In 2010, HDOA and the Department of Taxation worked together to develop the tax form and instructions required for an eligible IAL landowner to claim the credit. The new IAL credit form (N-344) and separate instructions are available at the DoTax's website at: http://www6.hawaii.gov/tax/a1_1alphalist.htm#nLabel

HDOA and the Department of Taxation also worked together on a form for an eligible landowner to request certification by the HDOA of a claim for costs and a template for reporting the outcomes and benefits resulting from the tax credit claim. Copies of the certification request form and outcome assessment template can be found at: <http://hawaii.gov/hdoa/Info/ial-tax-credit-information> and are included in Attachment A of this report.

QUANTITATIVE AND QUALITATIVE ASSESSMENT OF THE IMPACT OF THE LOAN GUARANTY PROGRAM

Legislative Background

Act 233, Session Laws of Hawaii 2008, requires that:

The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, that provides a quantitative and qualitative assessment of the impact of the loan guaranty program established in section 155-5.6, Hawaii Revised Statutes.

Description of the Loan Guaranty Program

The Chairperson of the Board of Agriculture may provide an 85% loan guaranty to commercial lenders which should result in a lower interest rate for agricultural borrowers on IAL. The interest rate on guaranteed loans will be 1% below the lender's prime rate. The IAL loan guaranty program is administered by HDOA's Agricultural Loan Division.

Outcomes and Effectiveness of the Loan Guaranty Program

The Agricultural Loan Division has not received any enquiries about the Loan Guaranty Program from Alexander & Baldwin, Inc., the only entity currently eligible to receive this

incentive. Given the financial strength of A&B, it is possible that A&B would be able to obtain more favorable terms than available through this incentive.

Attachment A

**REQUEST FOR COST CERTIFICATION FOR CLAIM OF THE IMPORTANT
AGRICULTURAL LAND QUALIFIED AGRICULTURAL COST TAX CREDIT**

Part I

Name of Taxpayer:

SSN/FEIN:

Address:

(Number and street, including apartment number or rural route, city, state, and zip code)

Location of designated Important Agricultural Land(s) on which qualified costs have been incurred (County and TMK No.):

Total qualified costs claimed (total should equal the sum of all qualified agricultural costs in Part II):\$

Credit year: First year Second year Third year

Contact person (Name and title):

Telephone No.: Email Address:

Part II

Identify the qualified agricultural cost (with an "x") and the amount of qualified agricultural cost that the taxpayer is claiming).

The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:

- A. Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands;
\$
- B. Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses; \$

- C. Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and \$
- D. Agricultural housing in the State, exclusively for agricultural purposes; provided that: \$
- (i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;
 - (ii) The housing units are owned by the agricultural business;
 - (iii) The housing units are in the general vicinity, as determined by the department of agriculture, of agricultural lands owned or leased by the agricultural business; and
 - (iv) The housing units conform to any other conditions that may be required by the department of agriculture;
- E. Feasibility studies, regulatory processing, and legal and accounting services related to the items described above; \$
- F. Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; \$; and
- G. Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands. \$

Please attach receipts and any other appropriate documentation which supports your request for certification. A brief narrative description of the purpose of the expenditure should be included with your request. Also, please note that the Department of Taxation may audit and adjust certification to conform to the facts.

Print this form on company letterhead and send along with receipts and the narrative description to:

Department of Agriculture
1428 S. King St.
Honolulu, HI 96814
Attn: Planning Office.

STATE OF HAWAII—DEPARTMENT OF TAXATION

FORM N-344 (2009)	IMPORTANT AGRICULTURAL LAND QUALIFIED AGRICULTURAL COST TAX CREDIT Or fiscal year beginning _____, 2009, and ending _____, 20____	TAX YEAR 2009
---------------------------------	---	------------------------------------

ATTACH TO FORM N-11, N-15, N-20, N-30, N-35, N-40, OR N-70NP, WHICHEVER IS APPLICABLE.

Name(s) as shown on Form N-11, N-15, N-20, N-30, N-35, N-40, or N-70NP	SSN or FEIN
--	-------------

Part I CREDIT CERTIFICATE

DEPARTMENT OF AGRICULTURE CERTIFICATE (Completed by the Department of Agriculture only)	
1. Name of taxpayer	2. SSN/FEIN
3. Address (Number and street, including apartment number or rural route, city, state, and postal/zip code)	
4. Description of designated important agricultural land (Include Tax Map Key, Number of acres, and Island)	
5. Total qualified costs allowed \$	6. Credit Year: <input type="checkbox"/> First Year <input type="checkbox"/> Second Year <input type="checkbox"/> Third Year
7. Amount of tax credit allowed for tax year 2009 \$	
This is to certify that the amounts noted above have been verified in accordance with section 235-110.93, Hawaii Revised Statutes.	
_____ Signature of Certifying Officer _____ (Type or Print Name and Title)	_____ Date of Certification

Part II COMPUTATION OF TAX CREDIT

Note: If you are only claiming your distributive share of a tax credit distributed from a partnership, an S corporation, an estate, or a trust, skip line 1 and begin on line 2.

1 Total amount of certified tax credit allowed for tax year 2009 from Part I, line 7.....	1	
2 Flow through of important agricultural land qualified agricultural cost tax credit received from other entities, if any: <i>Check the applicable box below. Enter the name and Federal Employer I.D. No. of Entity:</i>		
a <input type="checkbox"/> Partner — enter amount from Schedule K-1 (Form N-20), line 25		
b <input type="checkbox"/> S corporation shareholder — enter amount from Schedule K-1 (Form N-35), line 12n		
c <input type="checkbox"/> Beneficiary — enter amount from Schedule K-1 (Form N-40), line 9		
d <input type="checkbox"/> Patron — enter the amount from federal Form 1099-PATR		
3 Total credit — Add lines 1 and 2 and enter the result here (rounded to the nearest dollar for individual taxpayers) and on the appropriate line for the credit on Schedule CR (for Form N-11, N-15, N-30, and N-70NP filers); Form N-20, Schedule K; Form N-35, Schedule K; or Form N-40, Schedule F (for the estate's or trust's share) and/or Schedule K-1 (for the beneficiaries' share); whichever is applicable.	2	
	3	

Part III RECAPTURE OF TAX CREDIT

1 Enter the taxable year for which the certified written statement was not submitted to the Department of Agriculture.....	1	
2 Enter the amount of tax credit claimed for the taxable year in which the certified written statement was not submitted to the Department of Agriculture. Add this amount (rounded to the nearest dollar for individual taxpayers) to your tax liability for the tax year in which the recapture occurred.....	2	

Part IV FLOW-THROUGH ENTITIES ALLOCATING THE CREDIT TO ITS PARTNERS, SHAREHOLDERS, OR BENEFICIARIES

1. Tax credit allocated to partners, shareholders, or beneficiaries. Enter the amount from Part II, line 3..... \$

2. Allocation of the tax credit to its partners, shareholders, or beneficiaries as follows (if more space is needed, attach additional sheet(s)):

(a) No.	(b) Name and Address of Partner, Shareholder, or Beneficiary	(c) Identifying No. of Partner, Shareholder, or Beneficiary	(d) Amount of Tax Credit Allocated
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

3. Total from additional sheet(s)..... **3**

4. Total amounts allocated (Must equal Part IV, line 1 above.) **4**

STATE OF HAWAII - DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM N-344
IMPORTANT AGRICULTURAL LAND QUALIFIED
AGRICULTURAL COST TAX CREDIT

GENERAL INSTRUCTIONS

Note: If you are claiming the Ethanol Facility Tax Credit, no other credit can be claimed for the same taxable year.

Section 235-110.93, Hawaii Revised Statutes (HRS), provides that for taxable years beginning after May 31, 2009, each taxpayer who incurs qualified agricultural costs may claim a refundable important agricultural land qualified agricultural cost tax credit for the taxable year in which the credit is properly claimed. The amount of the credit is:

- (1) In the first year in which the credit is claimed, 25% of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008, or
 - (B) \$625,000;
- (2) In the second year in which the credit is claimed, 15% of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008, or
 - (B) \$250,000; and
- (3) In the third year in which the credit is claimed, 10% of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008, or
 - (B) \$125,000.

The taxpayer may incur qualified agricultural costs during a taxable year in anticipation of claiming the credit in future taxable years during which the credit is available. The taxpayer may claim the credit in any taxable year after the taxable year during which the taxpayer incurred the qualified agricultural costs upon which the credit is claimed. The taxpayer also may claim the credit in consecutive or inconsecutive taxable years until exhausted.

No tax credit shall be allowed for that portion of the qualified agricultural costs for which another tax credit or deduction was claimed under Hawaii's Income Tax Law for the taxable year.

The amount of the qualified agricultural costs eligible to be claimed shall be reduced by the amount of funds received by the taxpayer during the taxable year from the irrigation repair and maintenance special fund under section 167-24, HRS.

If a deduction is taken under Internal Revenue Code (IRC) section 179 (with respect to election to expense depreciable business assets), no tax credit shall be allowed for that portion of the qualified agricultural costs for which the IRC section 179 deduction was taken.

The basis of eligible property for depreciation or accelerated cost recovery system (ACRS) purposes for State income taxes shall be reduced by the amount of the tax credit that is allowable and claimed.

The qualified agricultural costs upon which the tax credit is computed is determined at the entity level. In the case of a partnership, S corporation, estate, trust, or other pass-through entity, distribution and share of the credit shall be determined pursuant to section 235-110.7(a), HRS.

Tax credit to be deducted from income tax liability, if any; refunds. If the credit exceeds the taxpayer's net income tax liability for the taxable year, the excess of the credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the credits shall be made for amounts less than \$1.

Time for filing. All claims for a tax credit, including amended claims, shall be filed on or before the end of the 12th month following the close of the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

Recapture of tax credit. Any credit already claimed for a taxable year will be recaptured if the taxpayer does not submit the certified written statement to the Department of Agriculture by the last day of the taxable year following the close of the taxpayer's taxable year in which the credit is claimed. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs. For more information, see INFORMATION REPORTING REQUIREMENTS FOR THE TAXPAYER CLAIMING THE CREDIT.

Definitions. For purposes of the important agricultural land qualified agricultural cost tax credit:

"Agricultural business" means any person with a commercial agricultural, silvicultural, or aquacultural facility or operation, including:

- (1) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
- (2) The planting, cultivating, harvesting, and processing of crops; and
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;

provided that the principal place of the agricultural business is maintained in the State and more than fifty per cent of the land the agricultural business owns or leases, excluding land classified as conservation land, is important agricultural land.

"Important agricultural lands" means lands identified and designated as important agricultural lands pursuant to part III of chapter 205, HRS.

"Net income tax liability" means income tax liability reduced by all other credits allowed under Hawaii's Income Tax Law.

"Qualified agricultural costs" means expenditures for:

- (1) The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:
 - (A) Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands;
 - (B) Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses;
 - (C) Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and
 - (D) Agricultural housing in the State, exclusively for agricultural purposes; provided that:
 - (i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;
 - (ii) The housing units are owned by the agricultural business;
 - (iii) The housing units are in the general vicinity, as determined by the Department of Agriculture, of agricultural lands owned or leased by the agricultural business; and
 - (iv) The housing units conform to any other conditions that may be required by the department of agriculture;
- (2) Feasibility studies, regulatory processing, and legal and accounting services related to the items under paragraph (1);
- (3) Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; and
- (4) Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands.

INFORMATION REPORTING REQUIREMENTS FOR THE TAXPAYER CLAIMING THE CREDIT

The Department of Agriculture, in consultation with the Department of Taxation, shall annually determine the information necessary to provide a quantitative and qualitative assessment of the outcomes of the tax credit.

Every taxpayer, no later than the last day of the taxable year following the close of the taxpayer's taxable year in which the credit is claimed, shall sub-

mit a certified written statement to the Department of Agriculture. Failure to provide the information shall result in ineligibility and a recapture of any credit already claimed for that taxable year. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

Notwithstanding any law to the contrary, the statement submitted by the taxpayer shall be a public document.

CERTIFICATION OF CREDITS BY THE DEPARTMENT OF AGRICULTURE

The Department of Agriculture shall:

- (1) Maintain records of the total amount of qualified agricultural costs for each taxpayer claiming a credit;
- (2) Verify the amount of the qualified agricultural costs claimed;
- (3) Total all qualified agricultural costs claimed; and
- (4) Certify the total amount of the tax credit for each taxable year.

Upon each determination, the Department of Agriculture shall issue a certificate to the taxpayer verifying the qualifying agricultural costs and the credit amount certified for each taxable year. For a taxable year, the Department of Agriculture may certify a credit for a taxpayer who could have claimed the credit in a previous taxable year, but chose not to because the maximum annual credit amount was reached in that taxable year.

The taxpayer shall file the certificate with the taxpayer's tax return with the Department of Taxation. Notwithstanding the Department of Agriculture's certification authority, the Director of Taxation may audit and adjust certification to conform to the facts.

Notwithstanding any other law to the contrary, the information required by the Department of Agriculture as described in this section shall be available for public inspection and dissemination under chapter 92F, HRS.

If in any taxable year the annual amount of certified credits reaches \$7,500,000 in the aggregate, the Department of Agriculture shall immediately discontinue certifying credits and notify the Department of Taxation. In no instance shall the Department of Agriculture certify a total amount of credits exceeding \$7,500,000 per taxable year. To comply with this restriction, the Department of Agriculture shall certify credits on a first come, first served basis.

The Department of Taxation shall not allow the aggregate amount of credits claimed to exceed that amount per taxable year.

The Department of Agriculture shall cease certifying credits after the fourth taxable year following the taxable year during which the credits are first claimed; provided that a taxpayer with accumulated, but unclaimed, certified credits may continue claiming the credits in subsequent taxable years until exhausted.

The Request for Cost Certification for Claim of the Important Agricultural Land Qualified Agricultural Cost Tax Credit may be obtained from:

Department of Agriculture
1428 S. King Street
Honolulu, HI 96814
Attn: Planning Office

Telephone: (808) 973-9466

Website: www.hawaii.gov/hdoa

**Important Agricultural Land
Qualified Agricultural Cost Tax Credit**

Outcome Assessment Report

All fields MUST be filled in. The report must be submitted to the Department of Agriculture no later than the last day of the taxable year following the close of the taxpayer's taxable year in which the credit is claimed. The report should be sent to:

Department of Agriculture
1428 S. King St.
Honolulu, HI 96814
Attn: Planning Office

Confidentiality Statement

This report and other records related to this report may be subject to public disclosure under Hawaii's Uniform Information Practices Act ("UIPA"), Chapter 92F, Hawaii Revised Statutes, which governs public access to the records of government agencies in Hawaii. The UIPA provides certain exceptions to public disclosure. One exception allows government agencies to protect information that constitutes confidential commercial and financial information that, if disclosed, would likely cause you substantial competitive harm. See Haw. Rev. Stat. §92-F-13(3) (1993). Pursuant to this exception, the Hawaii Department of Agriculture will not publicly disclose budget and expenditure information submitted for specific projects, but may disclose this information in anonymous or aggregate form. To request that other information submitted be protected under this exception, identify the information and explain how its disclosure would likely cause you substantial competitive harm. The Hawaii Department of Agriculture reserves the right to determine whether information submitted by you will be withheld from disclosure. You will be notified of any requests made for the disclosure of your information and whether the information will be disclosed in accordance with the UIPA:

Report Period

Tax year in which credit is claimed:

Taxpayer Information

1. Name of taxpayer claiming credit:
2. Address:
3. No. of IAL acres:
4. TMK No.:
5. Island:
6. Amount of credit claimed in current period: \$
7. Credit year: Year 1 ____ Year 2 ____ Year 3
8. Cumulative credits taken prior to current period:\$

9. Select the definition of "agricultural business" that best describes your business. If involved in multiple activities, rank (1=primary) all that apply.
- The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
 - The planting, cultivating, harvesting, and processing of crops; and
 - The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;
10. How long has the entity claiming the credit been in the agricultural business identified as the primary activity above?
11. Number of employees currently working in the primary activity on designated IAL?
- Permanent:
- Seasonal:

Description of Credit

Identify all of the "qualified agricultural costs" incurred and claimed as credits. Provide the cost claimed with each cost category.

The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:

- Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands; \$ _____
- Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses; \$ _____
- Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and \$ _____
- Agricultural housing in the State, exclusively for agricultural purposes; provided that: \$ _____
 - (i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;
 - (ii) The housing units are owned by the agricultural business;
 - (iii) The housing units are in the general vicinity, as determined by the department of agriculture, of agricultural lands owned or leased by the agricultural business; and
 - (iv) The housing units conform to any other conditions that may be required by the department of agriculture;
- Feasibility studies, regulatory processing, and legal and accounting services related to the items described above; \$ _____
- Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; \$ _____; and _____

- Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands.
\$

For all of the identified costs, provide the following information:

Description of the outcome of the expenditure, e.g. 2 miles of maintenance road was paved; processing facility was constructed with capacity of 10,000 pounds per day; or 2 million gallon storage tank was built.

Describe the benefit of the expenditure, e.g. maintenance crew reduced transit time by 45 minutes with 5% productivity improvement in number of miles of irrigation system cleared of brush; acreage expanded by 200 acres and 10 additional workers hired; effect of drought mitigated with average production increased during dry season by 6%. Quantify the benefit in measures that reflects the importance of the expenditure.

Will additional credits be claimed for this project? Yes No

Upon completion, what percentage of the total expenditure will the credit provide?
%

I hereby certify that I am authorized to sign on behalf of the applicant filing entity listed above, and further certify that all statements in this report are true and correct. I further certify that I understand that the Department of Agriculture may require additional information which I am obligated to provide.

Signature: _____

Name (print): Phone No.:

Title: Email

