

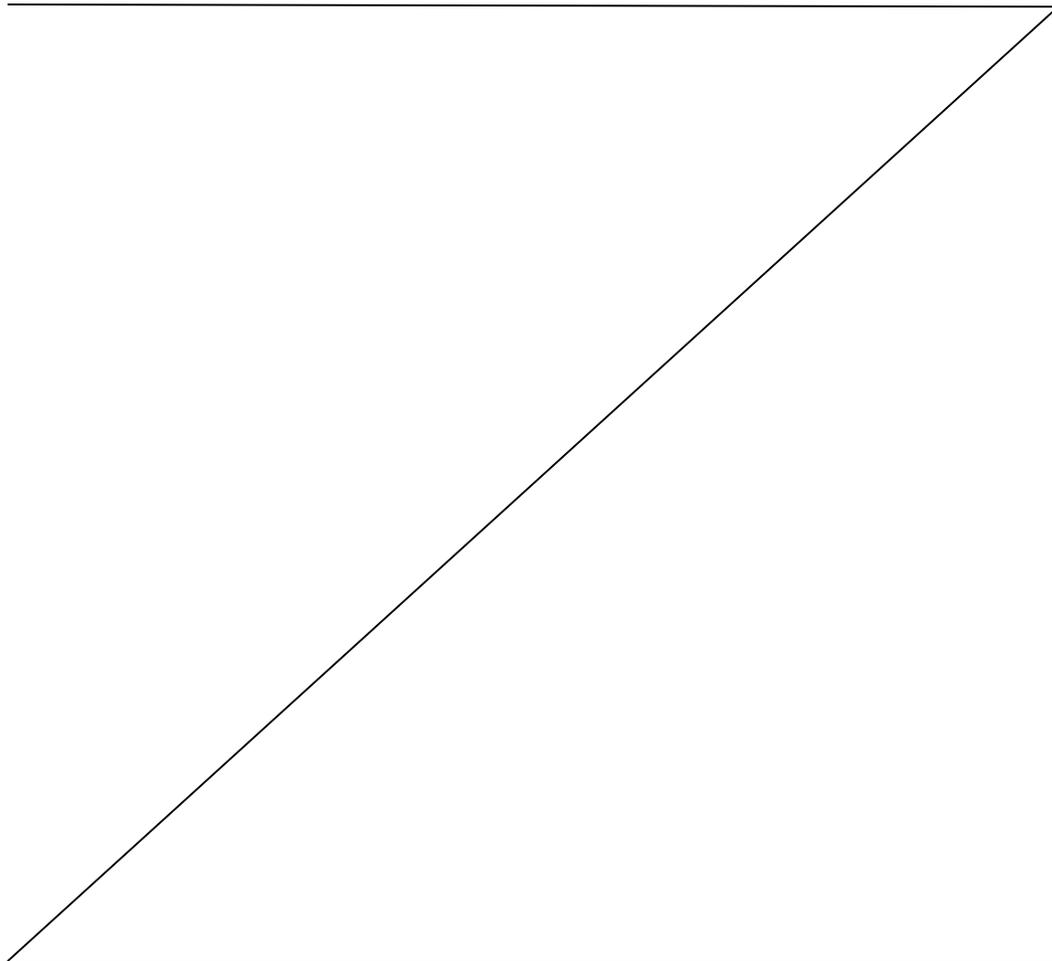
DEPARTMENT OF HEALTH

Repeal of Chapter 11-261 and Adoption of  
Chapter 11-261.1  
Hawaii Administrative Rules

September 15, 2016

1. Chapter 261 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management Identification and Listing of Hazardous Waste", is repealed.

2. Chapter 261.1 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Identification and Listing of Hazardous Waste", is adopted to read as follows:





"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 261.1

HAZARDOUS WASTE MANAGEMENT:  
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

- §11-261.1-1 Incorporation of 40 C.F.R. part 261
- §11-261.1-2 Substitution of state terms for federal terms
- §11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A
- §11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B
- §11-261.1-5 (Reserved)
- §11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D
- §11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E
- §§11-261.1-8 to 11-261.1-14 (Reserved)
- §11-261.1-15 Amendments to the incorporation of 40 C.F.R. part 261, subpart M
- §§11-261.1-16 to 11-261.1-31 (Reserved)
- §11-261.1-32 Amendments to the incorporation of 40 C.F.R. part 261 appendices

Historical note: This chapter is based substantially upon chapter 11-261. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R ]

§11-261.1-1 Incorporation of 40 C.F.R. part 261.  
Title 40, part 261 of the Code of Federal Regulations

(C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-261.1-2 to 11-261.1-32. [Eff \_\_\_\_\_] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 261, as incorporated and amended in this chapter, except as listed in subsection (b):

- (1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director of the Hawaii department of health".
- (2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except for all references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".
- (3) "Section 3010 of RCRA" and "section 3010 of the Act" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections: 40 C.F.R. sections 261.10 and 261.11.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1 as follows:

<u>Federal citation</u>	<u>State analog</u>
<u>40 C.F.R. part</u>	<u>chapter 11-</u>
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

[Eff ] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A. (a) The incorporation by reference of 40 C.F.R. section 261.1 is amended as follows:

- (1) In the introductory paragraph of 40 C.F.R. section 261.1(a), delete "271,".
- (2) In 40 C.F.R. section 261.1(b)(2), replace "sections 3007, 3013, and 7003 of RCRA" with "chapter 342J, HRS" and replace "these sections" with "sections 342J-6, 342J-7, 342J-8, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS,".

- (3) Replace 40 C.F.R. section 261.1(b)(2)(i) in its entirety to read: "In the case of sections 342J-6, 342J-7, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS, the department has reason to believe that the material may be a solid waste as the term is defined in section 342J-2, HRS, and a hazardous waste as the term is defined in section 342J-2, HRS; or"
- (4) In 40 C.F.R. section 261.1(b)(2)(ii), replace "7003" with "342J-8, HRS".
- (5) Replace 40 C.F.R. section 261.1(c)(1) in its entirety to read: "A "spent material" is any material that has been used, spilled, or otherwise contaminated and as a result can no longer serve the purpose for which it was produced without processing;"
  - (b) The incorporation by reference of 40 C.F.R. section 261.2 is amended as follows: in 40 C.F.R. section 261.2(c)(2)(ii), delete "listed in §261.33".
  - (c) The incorporation by reference of 40 C.F.R. section 261.3 is amended as follows:
    - (1) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(1), replace "subtitle D units" with "solid waste management units under chapter 342H, HRS".
    - (2) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(2), in the first sentence replace "subtitle D units" with "solid waste management units under chapter 342H, HRS". In the second and fifth sentences replace "subtitle D" with "chapter 342H, HRS, solid waste management".
  - (d) The incorporation by reference of 40 C.F.R. section 261.4 is amended as follows:
    - (1) In 40 C.F.R. section 261.4(a)(9)(iii)(E), delete "the appropriate Regional Administrator or" in the fourth sentence and delete "Regional Administrator or state" in the fifth sentence.
    - (2) 40 C.F.R. section 261.4(a)(22) is excluded from incorporation.

- (3) In 40 C.F.R. section 261.4(a)(26)(i), insert "with the accumulation start date and" after "labeled".
  - (4) 40 C.F.R. section 261.4(b)(4)(ii) and 261.4(b)(5) is excluded from incorporation.
  - (5) In 40 C.F.R. section 261.4(b)(10), after "under part 280 of this chapter" add ", chapter 342L, HRS, or rules adopted pursuant to chapter 342L, HRS".
  - (6) 40 C.F.R. section 261.4(b)(11) and 261.4(b)(17) is excluded from incorporation.
  - (7) In 40 C.F.R. section 261.4(b)(18)(i), insert "with the accumulation start date and" after "labeled".
  - (8) In 40 C.F.R. section 261.4(c), delete "271".
  - (9) In 40 C.F.R. section 261.4(e)(2)(iv), insert "hazardous waste management permit issued by any state, a" before "RCRA permit".
  - (10) In 40 C.F.R. section 261.4(e)(3)(iii), delete "in the Region where the sample is collected".
  - (11) In 40 C.F.R. section 261.4(f)(1), replace "the Regional Administrator, or State Director (if located in an authorized State)" with "director".
  - (12) 40 C.F.R. section 261.4(h) is excluded from incorporation.
- (e) The incorporation by reference of 40 C.F.R. section 261.5 is amended as follows:
- (1) 40 C.F.R. section 261.5(c)(7) is excluded from incorporation.
  - (2) In 40 C.F.R. section 261.5(f)(3)(i), insert "or subtitle C of RCRA" after "part 270 of this chapter".
  - (3) In 40 C.F.R. section 261.5(f)(3)(ii), insert "or subtitle C of RCRA" after "parts 270 and 265 of this chapter".
  - (4) Replace 40 C.F.R. section 261.5(f)(3)(iii) in its entirety to read: "Authorized to manage hazardous waste by the state."
  - (5) In 40 C.F.R. section 261.5(f)(3)(iv), replace "a State" with "the State or any

- state" and insert "or state rules that are the equivalent of 40 C.F.R. part 258" after "part 258 of this chapter". In 40 C.F.R. section 261.5(f)(3)(v), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. sections 257.5 through 257.30" after "§§ 257.5 through 257.30 of this chapter".
- (6) In 40 C.F.R. section 261.5(g)(3)(i), insert "or subtitle C of RCRA" after "part 270 of this chapter".
  - (7) In 40 C.F.R. section 261.5(g)(3)(ii), insert "or subtitle C of RCRA" after "parts 270 and 265 of this chapter".
  - (8) Replace 40 C.F.R. section 261.5(g)(3)(iii) in its entirety to read: "Authorized to manage hazardous waste by the state."
  - (9) In 40 C.F.R. section 261.5(g)(3)(iv), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. part 258" after "part 258 of this chapter".
  - (10) In 40 C.F.R. section 261.5(g)(3)(v), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. sections 257.5 through 257.30" after "§§ 257.5 through 257.30 of this chapter".
- (f) The incorporation by reference of 40 C.F.R. section 261.6 is amended as follows:
- (1) In 40 C.F.R. section 261.6(a)(5), replace "or to State requirements analogous to 40 C.F.R. part 273" with "or to chapter 11-273.1".
  - (2) In 40 C.F.R. section 261.6(c)(1), delete "267,".
  - (3) In 40 C.F.R. section 261.6(d), replace "RCRA permitting" with "hazardous waste management permitting". Replace the comma between "264" and "265" with "or" and delete "or 267".
- (g) The incorporation by reference of 40 C.F.R. section 261.9 is amended as follows:

- (1) In 40 C.F.R. section 261.9(c), delete "and".
- (2) In 40 C.F.R. section 261.9(d), replace the period at the end with "; and".
- (3) In 40 C.F.R. section 261.9, add a subsection (e) to read "(e) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1." [Eff \_\_\_\_\_] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B. The incorporation by reference of 40 C.F.R. section 261.11 is amended as follows: in 40 C.F.R. section 261.11(b), replace "section 1004(5) of the Act" with "section 342J-2, HRS". [Eff \_\_\_\_\_] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-5 (Reserved.)

§11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D. (a) The incorporation by reference of 40 C.F.R. section 261.30 is amended as follows: in 40 C.F.R. section 261.30(c), delete "267,".

(b) The incorporation by reference of 40 C.F.R. section 261.31 is amended as follows: in 40 C.F.R. 261.31(b)(2)(i)(A), replace "the units employ" with "the unit employs". [Eff \_\_\_\_\_] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-7

§11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E. 40 C.F.R. part 261, subpart E is excluded from the incorporation by reference of 40 C.F.R. part 261. [Eff ] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-8 to 11-261.1-14 (Reserved.)

§11-261.1-15 Amendment to the incorporation of 40 C.F.R. part 261, subpart M. The incorporation by reference of 40 C.F.R. section 261.420 is amended as follows: add a new subsection (g) to read: "(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies." [Eff ] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-16 to 11-261.1-31 (Reserved.)

§11-261.1-32 Amendment to the incorporation of 40 C.F.R. part 261 appendices. 40 C.F.R. part 261 appendix IX is excluded from the incorporation by reference of 40 C.F.R. part 261." [Eff ] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

3. The repeal of chapter 11-261 and the adoption of chapter 11-261.1, Hawaii Administrative

Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on September 15, 2016, and filed with the Office of the Lieutenant Governor.

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VIRGINIA PRESSLER, M.D.  
Director of Health

APPROVED AS TO FORM:

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Wade H. Hargrove III  
Deputy Attorney General

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DAVID Y. IGE  
Governor of Hawaii