

**March 2017 Detailed Description and Rationale  
for Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapters 260 to 280 and  
Adoption of Hawaii Administrative Rules, Title 11, Chapters 260.1 to 279.1  
Regarding Hazardous Waste Management**

Hawaii is an authorized state for the U.S. Environmental Protection Agency (EPA)'s national hazardous waste program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. In order to maintain authorization and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 271 (40 CFR 271) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are primarily found in 40 CFR 260 to 279.

The proposed replacement of chapters 11-260 to 11-280, Hawaii Administrative Rules (HAR) with chapters 11-260.1 to 11-279.1, HAR is in response to changes made by EPA to 40 CFR Parts 124 and 260 to 279. Chapters 11-260 to 11-279, HAR were based on the contents of the corresponding federal regulations at the time of their adoption in 1999. The new chapters 11-260.1 to 11-279.1, HAR will adopt current federal regulations (as of July 1, 2016) by reference, with appropriate modifications, bringing the department's regulations up to date with numerous changes in federal hazardous waste regulations.

The proposed rule changes will return the department to compliance with EPA's regulations pertaining to state program authorization (40 CFR 271). The department will be more effective in ensuring compliance with regulations to protect human health and the environment because we will be in compliance with federal regulations, the applicable state regulations will be clearer, and EPA and other nationally available program guidance will align more closely with Hawaii Administrative Rules.

A public hearing regarding proposed changes to the hazardous waste and used oil regulations described above was held on December 13, 2016. Please refer to the original (November 2016) detailed description of and rationale for proposed rule changes regarding this rulemaking for additional information: <http://health.hawaii.gov/shwb/hw-rules-update/>

After the hearing, DOH determined that numerous corrections and changes should be made to the proposed chapters. Most of the changes are technical corrections to the incorporation by reference of federal regulations, typographical errors, and formatting inconsistencies. The remaining corrections and changes made to the proposed rules are listed below. (Note: All references below to 40 CFR refer to the incorporated and amended version of the CFR section found in corresponding proposed HAR chapters 11-260.1 to 11-279.1.)

- (1) **Clarification for ease of reading and consistency with the language of the current regulations:** Added definition: "“Director,” or “director of health,” means the director of the State of Hawaii department of health or the director’s authorized agent.” Rather than replacing Administrator (and similar federal terms) with “director of the Hawaii department of health,” terms are replaced with “director” and “director” is defined in 40 CFR §260.10.

- (2) **Clarification of new definition “Electronic item”:** Added “(for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1)” to definition of electronic item after “Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person” (40 CFR §§260.10 and 273.9).
- (3) **Format change to support ease of use by regulated community:** The incorporated version of 40 CFR §§261.151 and 264.151 was changed to verbatim format for ease of use. This will allow facilities requiring financial assurance to copy and paste regulatory text to create financial assurance instruments, such as trust agreements, that must follow the exact wording of the regulations.
- (4) **Correction:** No change to incorporated federal text at 40 CFR §261.5(f)(3)(iii) and 261.5(g)(3)(iii). Removed previously proposed changes that would have restricted Conditionally Exempt Small Quantity Generator waste from being sent to authorized hazardous waste facilities in other states. The proposed changes were in error.
- (5) **Correction:** Added requirement for notification of state Hazard Evaluation and Emergency Response (HEER) office On Scene Coordinator in 40 CFR §§261.411(d)(3) and 261.420(f)(4)(ii), in addition to notification of the National Response Center. The added requirements are the same as the existing requirements in §§11-264-56(d)(2) and 11-265-56(d)(2), but notification requirements are new in chapter 11-261.1, applying to facilities managing hazardous secondary materials under new exemptions.
- (6) **Change per EPA Region 9 requirement:** Added requirement for notification of EPA Regional Administrator for cancellation of certain financial assurance instruments, in addition to notification of Director of Health (40 CFR §§261.151(b), (c), (g)(1) and (2), (h), (i), (j), and (k) and 264.151(b), (c), (d), (h)(1) and (2), (i), (j), (k), and (l)).
- (7) **Correction:** Change in reference to regulatory authorities for banks that perform trust services to allow regulated facilities to use banks regulated by federal authority or the authority of another state; no change to the incorporated federal language at 40 CFR §§264.143(a)(1), 145(a)(1), 265.143(a)(1), and 145(a)(1). This correction is a change from current HAR language in §§11-264-143(a)(1), 11-264-145(a)(1), 11-265-143(a)(1), and 11-265-145(a)(1).
- (8) **Correction and clarification:** In 40 CFR §266.80 regarding spent lead-acid batteries: 266.80(a) Removed “or who regenerate spent batteries” (an error) and added language to clarify that batteries that will be regenerated are not solid waste and are not regulated hazardous waste. 266.80(b) Added “(other than through regeneration)” for clarification. 266.80(c) and (d): Added “(including regeneration)” to export-related requirements for clarification and to maintain requirements as stringent as federal program.
- (9) **Correction:** 40 CFR part 124 subparts A and B (chapter 11-271.1): Change from 2015 to 2016 version of federal rules incorporated by reference. The text of the 2015 and 2016 versions of the federal rules are exactly the same, but this had not been confirmed at the time the proposed chapter draft was completed. Incorporating the 2016 version makes this chapter consistent with the other chapters.
- (10) **Proposed change not made; response to informal public comment:** Deleted proposed recordkeeping requirement for small quantity handlers of universal waste (40 CFR

§273.19). The Hazardous Waste (HW) Section has decided not to finalize this proposed rule change due to feedback received from the public during informal informational meetings. Although the proposed requirement could be met with routine business records (e.g. invoices, manifests, bills of lading) and HW section staff continue to believe that this requirement would not pose an added burden to businesses, we received feedback questioning this assumption. We may re-propose this requirement in another rulemaking action that undergoes review by the Small Business Regulatory Review Board.

- (11) **Correction:** Added text of proposed recordkeeping requirement for used oil generators (§11-279.1-12), which was accidentally omitted from the proposed draft chapter, and made conforming changes to section numbering and cross-references. This requirement was discussed at public informational meetings and in public rule proposal documents (<http://health.hawaii.gov/shwb/files/2016/10/detailed-description-of-proposed-rule-changes.pdf>, see pp. 1 and 9) and is based on similar regulatory text that already applies to transporters and processors of used oil.