

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-265.1

HAZARDOUS WASTE MANAGEMENT:
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL
FACILITIES

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Historical note: This chapter is based substantially upon chapter 11-265. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-265.1-1 Incorporation of 40 C.F.R. part 265.
Title 40, part 265 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-265.1-2 to 11-265.1-25. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

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§11-265.1-2 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 265, as incorporated and amended in this chapter, except as listed in subsection (b):

- (1) "Administrator", "applicable EPA Regional Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".
- (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 in 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 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 265, as incorporated and amended in this chapter:

- (1) 40 C.F.R. sections 265.12 and 265.71.
- (2) The second occurrence of "EPA" in 40 C.F.R. section 265.1083(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, 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, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation	State analog
<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

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

- (1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 265.70(b).
- (2) The references in 40 C.F.R. sections 265.1033(m)(1)(i), 265.1033(m)(2)(i), 265.1033(m)(3)(i), 265.1083(c)(2)(vii)(A), 265.1083(c)(2)(viii)(A), and 265.1088(c)(5)(i)(D).
- (3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; am and comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-3 Amendments to the incorporation of 40 C.F.R. part 265, subpart A. (a) The incorporation by reference of 40 C.F.R. section 265.1 is amended as follows:

- (1) In 40 C.F.R. section 265.1(a), replace "national standards" with "state standards".
- (2) In 40 C.F.R. section 265.1(b), replace "section 3005 RCRA" with "section 342J-5,

- HRS,". Replace "facilities in existence on November 19, 1980" with "existing HWM facilities, as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1,". Replace "section 3010(a) of RCRA" with "42 U.S.C. section 6925(a) or section 342J-6.5, HRS".
- (3) 40 C.F.R. section 265.1(c)(4) is excluded from incorporation.
 - (4) In 40 C.F.R. section 265.1(c)(5) replace "a State" with "the State".
 - (5) In 40 C.F.R. section 261.(c)(7), replace "subparts K and L" with "subpart L".
 - (6) In 40 C.F.R. section 265.1(c)(11)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".
 - (7) In 40 C.F.R. section 265.1(c)(14)(iii), delete "and".
 - (8) In 40 C.F.R. section 265.1(c)(14)(iv) replace the period at the end with "; and".
 - (9) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (v) to read: "(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."
 - (10) 40 C.F.R. section 265.1(c)(15) is excluded from incorporation.
- (b) The incorporation by reference of 40 C.F.R. section 265.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-4 Amendments to the incorporation of 40 C.F.R. part 265, subpart B. (a) The incorporation by reference of 40 C.F.R. section 265.11 is amended as follows: replace "in accordance with the EPA notification procedures (45 FR 12746)" with "using EPA form 8700-12".

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(b) The incorporation by reference of 40 C.F.R. section 265.12 is amended as follows: add a new subsection (c) to read: "(c) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section 11-262.1-16."

(c) The incorporation by reference of 40 C.F.R. section 265.13 is amended as follows:

(1) In 40 C.F.R. section 265.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 265.13(b)(7)(iii), delete "under §260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 265.14 is amended as follows: in 40 C.F.R. section 265.14(a), insert "he can demonstrate to the director that" after "unless".

(e) The incorporation by reference of 40 C.F.R. section 265.18 is amended as follows: Delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp
SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-5 (Reserved.)

§11-265.1-6 Amendments to the incorporation of 40 C.F.R. part 265, subpart D. The incorporation by reference of 40 C.F.R. section 265.56 is amended as follows: in 40 C.F.R. section 265.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp **SEP 30 2018**]

(Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-7 Amendments to the incorporation of 40 C.F.R. part 265, subpart E. (a) The incorporation by reference of 40 C.F.R. section 265.73 is amended as follows:

- (1) In 40 C.F.R. section 265.73(b)(8), replace "monitoring" with "or monitoring" and delete "or a certification under §268.8 of this chapter,".
- (2) In 40 C.F.R. section 265.73(b)(9), (10), (11), (12), (13), and (14), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace "the following" with "each". [Eff 7/17/17; am and comp

SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-8 Amendments to the incorporation of 40 C.F.R. part 265, subpart F. The incorporation by reference of 40 C.F.R. section 265.90 is amended as follows: in section 40 C.F.R. section 265.90(d)(1), replace "develop" with "submit to the director". [Eff 7/17/17; comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-9 Amendments to the incorporation of 40 C.F.R. part 265, subpart G. (a) The incorporation by reference of 40 C.F.R. section 265.113 is amended as follows: 40 C.F.R. section 265.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances. [Eff 7/17/17; am and comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-10 Amendments to the incorporation of 40 C.F.R. part 265, subpart H. (a) The incorporation by reference of 40 C.F.R. section 265.143 is amended as follows: in 40 C.F.R. section 265.143(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 265.145 is amended as follows: in 40 C.F.R. section 265.145(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 265.147 is amended as follows:

- (1) In 40 C.F.R. section 265.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and

maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

- (2) In 40 C.F.R. section 265.147(g)(2)(i) and (ii), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".
- (3) In 40 C.F.R. section 265.147(i)(4)(ii), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 265.149 and 265.150 are excluded from the incorporation by reference of 40 C.F.R. part 265. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35) **SEP 30 2018**

§11-265.1-11 Amendments to the incorporation of 40 C.F.R. part 265, subpart I. Reserved for amendments to 40 C.F.R. part 265, subpart I. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35) **SEP 30 2018**

§11-265.1-12 Amendments to the incorporation of 40 C.F.R. part 265, subpart J. The incorporation by reference of 40 C.F.R. section 265.191 is amended as follows:

- (1) In 40 C.F.R. section 265.191(a), replace "January 12, 1988" with "January 12, 1988"

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for HSWA tanks and June 18, 1995 for non-HSWA tanks".

- (2) In 40 C.F.R. section 265.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste." [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-13 Amendments to the incorporation of 40 C.F.R. part 265, subpart K. The incorporation by reference of 40 C.F.R. section 265.221 is amended as follows: in 40 C.F.R. section 265.221(d)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-14 to 11-265.1-15 (Reserved.)

§11-265.1-16 Amendments to the incorporation of 40 C.F.R. part 265, subpart N. The incorporation by reference of 40 C.F.R. section 265.301 is amended as follows: in 40 C.F.R. section 265.301(d)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-17 to 11-265.1-19 (Reserved.)

§11-265.1-20 Amendments to the incorporation of 40 C.F.R. part 265, subpart R. The incorporation by reference of 40 C.F.R. part 265, subpart R is amended as follows: replace 40 C.F.R. section 265.430 in its entirety to read:

"§265.430 Applicability
Underground injection of hazardous waste is prohibited in the State of Hawaii." [Eff 7/17/17; comp
SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-21 Amendments to the incorporation of 40 C.F.R. part 265, subpart W. The incorporation by reference of 40 C.F.R. section 265.440 is amended as follows: in 40 C.F.R. section 265.440(a), replace "December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". [Eff 7/17/17; comp
SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-22 Amendments to the incorporation of 40 C.F.R. part 265, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 265.1030 is amended as follows: 40 C.F.R. section 265.1030(c) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1033 is amended as follows:

- (1) In 40 C.F.R. section 265.1033(a)(2)(iii), delete "EPA".

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- (2) In 40 C.F.R. section 265.1033(m)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".
- (3) In 40 C.F.R. section 265.1033(m)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".
- (4) In 40 C.F.R. section 265.1033(m)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-23 Amendments to the incorporation of 40 C.F.R. part 265, subpart BB. (a) The incorporation by reference of 40 C.F.R. section 265.1050 is amended as follows: 40 C.F.R. section 265.1050(f) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1060 is amended as follows: in 40 C.F.R. section 265.1060(b)(3), delete "EPA". [Eff 7/17/17; comp **SEP 30 2018**] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-24 Amendments to the incorporation of 40 C.F.R. part 265, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 265.1080 is amended as follows:

- (1) In 40 C.F.R. section 265.1080(b) (5), insert "section 342J-36, HRS;" after "CERCLA authorities;".
- (2) In 40 C.F.R. section 265.1080(c) (1) and (2), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".
- (3) 40 C.F.R. section 265.1080(e) to (g) is excluded from incorporation.
 - (b) The incorporation by reference of 40 C.F.R. section 265.1082 is amended as follows: in 40 C.F.R. section 265.1082(c) and 265.1082(d), replace "December 8, 1997" with "March 13, 1999".
 - (c) The incorporation by reference of 40 C.F.R. section 265.1083 is amended as follows:
 - (1) In 40 C.F.R. section 265.1083(c) (2) (vii) (A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".
 - (2) In 40 C.F.R. section 265.1083(c) (2) (viii) (A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".
 - (3) In 40 C.F.R. section 265.1083(c) (4) (ii), insert "and approved by the director" at the end of the sentence.
 - (d) The incorporation by reference of 40 C.F.R. section 265.1088 is amended as follows: in 40 C.F.R. section 265.1088(c) (5) (i) (D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section

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11-266.1-1" before "; or". [Eff 7/17/17; comp
SEP 30 2018] (Auth: HRS §§342J-4, 342J-31,
342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31,
342J-34, 342J-35)

**§11-265.1-25 Amendments to the incorporation of
40 C.F.R. part 265, subpart DD.** The incorporation by
reference of 40 C.F.R. section 265.1100 is amended as
follows: in the introductory paragraph, replace "RCRA
section 3004(k)" with "40 C.F.R. 268.2(c), as
incorporated and amended in section 11-268.1-1". [Eff
7/17/17; am and comp SEP 30 2018] (Auth: HRS
§§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS
§§342J-4, 342J-31, 342J-34, 342J-35)