

Explanation of proposed changes

Most of the proposed changes in this rulemaking action are based on changes EPA has made to the federal hazardous waste rules, which are incorporated by reference (with amendments) in the State rules. This rulemaking updates the state's incorporation of the federal rules from the July 1, 2017 version of the Code of Federal Regulations (CFR) to the July 1, 2019 version.

Additional changes are proposed to:

- Correct typographical errors and cross-references.
- Increase conformance with the Hawaii Administrative Rules drafting manual, including elimination of gendered pronouns.
- Increase internal consistency (see #10).
- Make non-substantive corrections to improve the clarity of existing requirements (see #11).

Significant changes affecting chapters 11-260.1 to 11-265.1, HAR, are proposed. No significant changes to waste- and facility-specific regulations (chapter 11-266.1), land disposal restrictions (chapter 11-268.1), the hazardous waste permitting program (chapters 11-270.1 and 11-271.1), universal waste regulations (chapter 11-273.1), or used oil regulations (chapter 11-279.1) are proposed.

EPA rules that the State proposes to adopt in this rulemaking are the following:

1. AES filing compliance date for hazardous waste exports.

This rule did not change the text in the CFR but identified the AES (Automated Export System) filing compliance date as December 31, 2017. The requirements for exporters to file paperwork electronically beginning on the AES filing compliance date is already in the State rules; the department is replacing "the AES filing compliance date" with "December 31, 2017" and "one year after the AES filing compliance date" with "December 31, 2018" in the State rules to improve clarity. [[82 FR 41015](#)]

2. Confidentiality determinations for hazardous waste export and import documents.

Beginning on June 28, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in hazardous waste export, import, and transit documents, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format. The federal rule is already effective for exporter and importers within the State who submit the relevant documents to EPA, and the department is required to adopt the rule. [[82 FR 60894](#)]

3. Hazardous Waste Manifest System user fee rule.

This rule establishes the fee structure for the national e-manifest system and new paper manifest printing specifications and is already effective for e-manifest system users and manifest printers within the State. The department is required to adopt this rule. [[83 FR 420](#)]

4. Response to vacatur of certain provisions of the 2015 Definition of Solid Waste (DSW) rule.

The department is adopting changes to the conditional exclusions for hazardous secondary material (HSM) being recycled and the definition of legitimate recycling that were made by EPA in response to a court order. The verified recycler exclusion will be replaced with a transfer-based exclusion. [[83 FR 24664](#)]

5. Address change for waste import-export submittals from the Office of Federal Activities to the Office of Resource Conservation and Recovery

The department is adopting changes to the EPA office and address to which paper documents concerning imports and exports of hazardous waste must be sent. The federal rule is already effective for exporter and importers within the State who submit the relevant documents to EPA, and the department is required to adopt the rule. [[83 FR 38262](#)]

6. Safe Management of Recalled Airbags

This rule provides a conditional exemption for airbag modules and inflators from regulation as hazardous waste during their initial generation as waste and transport to an airbag waste collection facility. It is designed to facilitate expedited removal of defective airbags from vehicles by automobile dealerships. The airbag waste must be managed according to specific conditions in order to qualify for the exemptions, and EPA has created these conditions to ensure that the waste is safely handled. The department is not required to adopt this rule but is adopting the rule due to the immediate and increasing danger posed by defective airbags remaining installed in vehicles. [[83 FR 61552](#)]

7. Amendments to the P075 Listing for Nicotine

This change excludes unused FDA-approved over-the-counter nicotine replacement patches, gums, and lozenges in which nicotine or nicotine salts are the only active ingredient from being listed hazardous waste (EPA waste code P075). This change is part of a larger federal rule that became effective in August 2019 but is the only portion of this rule the department plans to adopt at this time. [[84 FR 5816](#)]

Additional state-initiated changes are proposed as follows:

8. Corrections to typographical errors and cross-references.
9. Formatting changes to conform with the Hawaii Administrative Rules drafting manual, including elimination of gendered pronouns.
10. A change to 40 C.F.R. section 264.52(d), as incorporated and amended in chapter 11-264.1, HAR, to allow the use of emergency telephone numbers (which may be a work cell phone) in lieu of home addresses and phone numbers for emergency coordinators in contingency plans for Treatment, Storage, and Disposal Facilities (TSDFs). This change is consistent with the change made to contingency plans for generators at part of EPA's Generator Improvements Rule adopted by the department on September 30, 2018.
11. Clarifications
 - a. "The effective date of this chapter" and "the effective date of these rules" are replaced with "July 17, 2017" or "September 30, 2018" as appropriate for clarity (July 17, 2017 is the original date of adoption of chapters 11-260.1 to 11-279.1; September 30, 2018 is the effective date of the most recent set of amendments to these regulations).
 - b. A definition of "authorized state" or "approved state" is added to 40 CFR section 260.10, as incorporated and amended in chapter 11-260.1, HAR, to aid interpretation of the new airbag rule. This also clarifies existing uses of the term "authorized state" in incorporated federal language.
 - c. A reference to the definition of solvent-contaminated wipes (in 40 CFR section 260.10, as incorporated and amended in chapter 11-260.1, HAR) is added to 40 CFR section 261.4(a)(26) and 261.4(b)(18), as incorporated and amended in chapter 11-261.1, HAR, to clarify the scope of these conditional exclusions.
 - d. A change is made to 40 CFR section 261.30(d), as incorporated and amended in chapter 11-261.1, HAR, to clarify that the listed waste codes (F020, F021, F022, F023, F026, and F027) refer to acute hazardous wastes. A definition for acute hazardous wastes and a more extensive discussion of how generation of acute hazardous waste affects generator status was added as part of EPA's Generator Improvements Rule adopted by the department on September 30, 2018.
 - e. Changes are made to 40 CFR section 260.2, as incorporated and amended in chapter 11-260.1, HAR, to clarify the relevant authorities for confidentiality determinations and dates for limitations on confidentiality claims for (1) claims made to EPA and (2) claims made to the department.