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Incorporation of 40 C.F.R. part 265.


§11-265.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 265,
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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).

(3) 40 C.F.R. part 265, subpart FF.

(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 Rules analogs are as follows:
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<table>
<thead>
<tr>
<th>Federal citation</th>
<th>State analog</th>
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<tbody>
<tr>
<td>40 C.F.R. part</td>
<td>chapter 11-</td>
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<tr>
<td>124</td>
<td>271.1</td>
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<td>260</td>
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(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).


§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:

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(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 265.1(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)(iv), delete “and”.

(8) In 40 C.F.R. section 265.1(c)(14)(v), replace the period at the end of the subparagraph with a semicolon.

(9) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (vi) to read: “(vi) Electronic items as described in 40 C.F.R. section 273.6.1, as incorporated and amended in section 11-273.1-1; and”.

(10) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (vii) to read: “(vii) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1.”

(11) 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 9/30/18; am and comp 6/25/20; am and comp 6/25/21] (Auth: HRS §§342J-4, 342J-31,
§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". 

(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 "the owner or operator 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 9/30/18; am and comp 6/25/20; comp

§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”.

§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 265.71 is amended as follows: the comment in 40 C.F.R. section 265.71(c) is excluded from incorporation.

(b) 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)(4), replace “§ 265.56(j);” with “40 C.F.R. section 265.56(i), as incorporated and amended in this chapter;”.

2. 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,”.

3. 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”.

(c) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace “the following” with “each”.

(d) The incorporation by reference of 40 C.F.R. section 265.77 is amended as follows: in 40 C.F.R.
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§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.


§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 265.1-8
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
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“the State of Hawaii” and replace “in that State” with “in their respective states”.


§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 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 9/30/18; comp 6/25/20; comp JUN 07 2021] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)


§11-265.1-17 Amendments to the incorporation of 40 C.F.R. part 265, subpart O. The incorporation by reference of 40 C.F.R. section 265.340 is amended as follows: replace 40 C.F.R. section 265.340(b)(2) in its entirety to read: “(2) The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of 40 C.F.R. part 63, subpart EEE: 40 C.F.R. section 265.351 (closure), as incorporated and amended in this chapter, and the applicable requirements of 40 C.F.R. part 265, subparts A to H, BB, and CC, as incorporated and amended in this chapter.” [Eff 6/25/20; comp 07-2021]
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§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 265.1-12
§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.

§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.