

Explanation of amendments

EPA rules

Some of the proposed changes in this rulemaking action are in response to 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, 2020 version of the CFR to the July 1, 2022 version, effectively adopting two new EPA rules:

(1) Modernizing Ignitable Liquids Determinations

This rule updates allowed testing methods related to the flashpoint of liquid waste and air sampling to align with current ASTM and EPA standards and allow alternatives to tests requiring use of mercury thermometers. It also codifies existing EPA guidance defining aqueous as “at least 50 percent water by weight” in relation to the exclusion of certain aqueous alcohol-containing wastes and updates references to Department of Transportation regulations. [[85 FR 40594](#)]

(2) Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes

This rule makes changes related to codes used in hazardous waste export and import notices submitted to EPA. The changes conform with Canadian regulatory change to codes representing certain waste recovery and disposal operations. EPA requires the department's authorized hazardous waste program to adopt this rule. [[86 FR 54381](#)]

State-initiated changes

(3) Universal waste solar panels: Add universal waste management standards allowing universal waste handlers to remove frames from solar panels when complying with conditions [in 40 CFR section 273.13(g)(3) and (4) and 273.33(g)(3) and (4), as incorporated and amended in chapter 11-273.1, HAR].

Under the proposed management standards for universal waste solar panels, handlers may remove the panels' frames without a hazardous waste treatment permit. The metal frames can be recycled locally, and this will significantly reduce shipping costs for the remainder of the solar panel because panels can be stacked more closely within a shipping container. Conditions are included to ensure that de-framing is conducted in a manner that protects human health and the environment. This rule change has been requested by regulated entities.

(4) Universal waste electronic items

(a) Add universal waste management standards allowing universal waste handlers to drill holes in or crush electronic storage media when complying with conditions [in 40 Code of Federal Regulations (CFR) section 273.13(f)(6) and 273.33(f)(6), as incorporated and amended in chapter 11-273.1, HAR].

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Under the proposed management standards for universal waste electronic items, handlers may drill holes in or crush hard drives, solid state drives, or similar electronic storage media for the purpose of meeting data security standards or media sanitization standards without a hazardous waste permit. Conditions are included to ensure that drilling or crushing is conducted in a manner that protects human health and the environment. This rule change has been requested by regulated entities.

(b) Clarify language allowing universal waste handlers to remove discrete components that are typically removed by consumers for replacement during the normal operation of an electronic item [in 40 CFR section 273.13(f)(4)(iii) and 273.33(f)(4)(iii), as incorporated and amended in chapter 11-273.1, HAR].

(c) Add an option for handlers of universal waste to label a designated universal waste electronic item storage area demarcated by boundaries rather than labeling each electronic item or container or pallet containing electronic items [in 40 CFR section 273.14(g) and 273.34(g), as incorporated and amended in chapter 11-273.1, HAR].

(5) Universal waste batteries: Add an option for handlers of universal waste to label a designated universal waste battery storage area demarcated by boundaries rather than labeling each battery or container or pallet containing batteries [in 40 CFR section 273.14(a) and 273.34(a), as incorporated and amended in chapter 11-273.1, HAR].

(6) Change the requirement for small quantity generator posting of emergency information from “next to telephones and in areas directly involved in the generation and accumulation of hazardous waste” to “in areas directly involved in the generation and accumulation of hazardous waste or, if cellular telephones cannot be safely used in these areas, next to the nearest telephones” [in 40 CFR section 262.16(b)(9)(ii), as incorporated and amended in chapter 11-262.1, HAR].

Small quantity generators must currently post emergency information both in areas where hazardous waste is generated and stored and next to telephones on their site. Due to the ubiquitous presence of cell phones at most sites, the department is proposing to alleviate burden on the generators by requiring the information to be posted only in areas where hazardous waste is generated and stored. For sites where cell phones cannot be used safely in areas of hazardous waste generation and accumulation, the information would instead be required to be posted only next to the nearest telephone. This rule change has been requested by regulated entities.

(7) Correct errors and increase internal consistency

- Remove cross-references to 40 CFR section 260.31(d). 40 CFR section 260.31(d) was removed from the (July 1, 2019) federal rules that were incorporated by reference effective June 25, 2020 [in 40 CFR part 261 subpart M, as incorporated and amended in chapter 11-261.1, HAR].
- Exclude 40 C.F.R. section 262.14(a)(2) from incorporation by reference. This exclusion corrects an error in the federal regulations incorporated by reference to clarify that

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compliance with 40 CFR section 262.11(a) to (d), as incorporated and amended in chapter 11-262.1, HAR, is an independent requirement for very small quantity generators.

- Replace cross-reference to 40 CFR section 262.60, as incorporated and amended in chapter 11-262.1, HAR, with reference to 40 CFR part 262 subpart H, as incorporated and amended in chapter 11-262.1, HAR [in section 11-262.1-16, HAR]. 40 CFR section 262.60 was replaced by 40 CFR part 262 subpart H in the Hazardous Waste Export-Import Revisions rule, which was incorporated by reference effective September 30, 2018.
- Correct punctuation for internal consistency: change the final period to “; and” in 40 CFR section 273.13(f)(4)(iii), as incorporated and amended in chapter 11-273.1, HAR.
- Numerous corrections and clarifications not affecting the substantive content of the rules were made after public hearing. Changes were made to correct punctuation, formatting, citations, and references to the EPA Regional Administrator that should refer to the state director of health in the state’s incorporated version of the federal rules. Changes were also made to clarify requirements for financial assurance instruments covering facilities located in multiple states. Each individual change is listed in the table below with an explanation

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Section number	Change	Explanation of change
11-260.1-4(a)(2)	<u>“Hazardous secondary material generator” definition. Delete “§ 261.2(a)(2)(ii) and”.</u>	The referenced paragraph (40 CFR §261.2(a)(2)(ii)) was removed by EPA’s 2015 Definition of Solid Waste rule (80 FR 1694), which was incorporated by the department effective July 17, 2017.
11-260.1-4(b)(1)	In 40 C.F.R. section [260.11(c)(3)(xxvii);] <u>260.11(c)(4)(xxvii)</u> , <u>insert “and” after “265.1081” and</u> delete “267.190(a)”,.	This change corrects formatting by inserting the word “and”.
11-260.1-4(b)(2)	In 40 C.F.R. section [260.11(d)(1);] <u>260.11(d)(1)</u> and <u>260.11(d)(2)</u> , insert “and” after “264.198(b)” and delete “, and 267.202(b)”.	Conforms formatting with recommendations by the Legislative Reference Bureau.
11-261.1-3(d)(19)	In 40 C.F.R. section 261.4(e)(1), replace “40 CFR 261.5 and 262.34(d)” with “40 C.F.R. [section 262.13,] <u>sections 262.13 and 262.16(b)</u> , as incorporated and amended in section 11-262.1-1”.	Corrects a cross-reference to better reflect the original. Material regarding generator category determination now located in 40 CFR section 262.13 was previously at 40 CFR 261.5 and material regarding accumulation quantity limits for small quantity generators that was previously at 40 CFR 262.34(d) is now at 40 CFR 262.16(b). Both 40 CFR 261.5 and 40 CFR 262.34 were eliminated by EPA’s Hazardous Waste Generator Improvements Rule (81 FR 85732), which was incorporated by the department effective September 30, 2018.
11-261.1-10(c)	The incorporation by reference of 40 C.F.R. section 261.147 is amended as follows: [in] <u>(1) In ...[unchanged]</u> <u>(2) In 40 C.F.R. section 261.147(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”.</u> <u>(3) In 40 C.F.R. section 261.147(i)(4), 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”.</u>	Clarifies requirements for financial assurance instruments covering facilities located in multiple states, conforming state language for hazardous secondary material reclamation facilities and intermediate facilities requiring financial assurance under chapter 11-261.1, HAR, with requirements already applied to permitted and interim hazardous waste treatment, storage, and disposal facilities in chapter 11-264.1 and 11-265.1, HAR.

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11-261.1-15(b)(2)	In 40 C.F.R. section 261.410(f)(1) and 261.410(f)(2) , delete “or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d)”.	Conforms formatting with recommendations by the Legislative Reference Bureau.
11-261.1-15(d)(1)	In the introductory paragraph of 40 C.F.R. section 261.420 and 40 C.F.R. section 261.420(a)(1), delete “or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d)”.	Clarifies the location of the incorporated federal text that state changes are applied to.
11-262.1-2(d)(1)	References to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 262.20(a)(2).	The obsolete section 262.20(a)(2) is being deleted, so this is no longer necessary. See below at section 11-262.1-4.
11-262.1-2(d)(2)	The reference to 40 C.F.R. section 262.25 in 40 C.F.R. section [262.24(g)] 262.24(a)(1).	40 CFR section 262.24(g) was removed by EPA’s e-manifest system user fees rule (83 FR 420), which was incorporated by the department effective June 25, 2020. 40 CFR section 262.25 deals with electronic manifest signatures and is not delegable to authorized states. This change removes the reference to 40 CFR section 262.25 from the general substitution for cross-references so that the cross reference refers to the federal rules rather than the state rules.
11-262.1-3(e)(6)	In 40 C.F.R. section 262.14(a)(5)(ix), replace the period at the end of the paragraph with a semicolon.	Corrects punctuation.
11-262.1-3(e)(7)	In 40 C.F.R. section 262.14(a)(5)(x), insert “or electronic nicotine delivery system retailer” after each instance of “healthcare facility” [and] , replace “non-creditable hazardous waste pharmaceuticals” with “non-creditable subpart P hazardous waste” [.] , and replace the period at the end of the paragraph with “; or”.	Corrects punctuation.
11-262.1-3(g)(6)	In 40 C.F.R. section 262.16(b)(9)(ii), replace “or” with “and.”] delete “next to telephones or” and insert “or, if cellular telephones cannot be safely used in these areas, next to the nearest telephones” before the semicolon colon at the end of the clause.	Clarifies the location of the incorporated federal text that state changes are applied to.
11-262.1-4	§11-262.1-4 Amendments to the incorporation of 40 C.F.R. part 262, subpart B. The incorporation by reference of 40 C.F.R. section 262.20 is	40 CFR section 262.20(a)(2) is obsolete and does not add any new requirements. The sections it refers to apply independently (and some of the references are to sections that no longer exist).

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	<u>amended as follows: 40 C.F.R. section 262.20(a)(2) is excluded from incorporation.</u>	
11-262.1-10(a)	<u>(3) In 40 C.F.R. section 262.83(i)(1)(v), replace “§262.85” with “§262.83(f)”.</u>	Corrects a cross-reference changed in EPA’s Hazardous Waste Export-Import Revisions rule (81 FR 85696), which was incorporated by the department effective September 30, 2018.
11-263.1-2(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 263, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to <u>[the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 263.20(a)(3).] 40 C.F.R. section 262.25.</u>	40 CFR section 263.20(a)(3) is obsolete and is being excluded from incorporation. The sections it refers to apply independently. 40 CFR section 262.25 deals with electronic manifest signatures and is not delegable to authorized states. These changes remove the references to 40 CFR section 262.25 from the general substitution for cross-references so that the cross reference refers to the federal rules rather than the state rules.
11-264.1-2(d)	Delete (d)(1): <u>The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 264.70(b).</u>	40 CFR section 264.70(b) is obsolete and is being excluded from incorporation. The sections it refers to apply independently.
11-264.1-2(d)(2)	References to 40 C.F.R. sections <u>262.25</u> , 268.5, 268.6, and 268.42(b).	40 CFR section 262.25 deals with electronic manifest signatures and is not delegable to authorized states. These changes remove the references to 40 CFR section 262.25 from the general substitution for cross-references so that the cross reference refers to the federal rules rather than the state rules.
11-264.1-7	Add (a): <u>(a) The incorporation by reference of 40 C.F.R. section 264.70 is amended as follows: 40 C.F.R. section 264.70(b) is excluded from incorporation.</u>	40 CFR section 264.70(b) is obsolete and is being excluded from incorporation. The sections it refers to apply independently.
11-265.1-2(d)	Delete (d)(1): <u>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).</u>	40 CFR section 265.70(b) is obsolete and is being excluded from incorporation. The sections it refers to apply independently
11-265.1-2(d)(2)	References to 40 C.F.R. sections <u>262.25</u> , 268.5, 268.6, and 268.42(b).	40 CFR section 262.25 deals with electronic manifest signatures and is not delegable to authorized states. These changes remove the references to 40 CFR section 262.25 from the general substitution for cross-references so that the cross reference refers to the federal rules rather than the state rules.

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11-265.1-7	Add (a): <u>(a) The incorporation by reference of 40 C.F.R. section 264.70 is amended as follows: 40 C.F.R. section 264.70(b) is excluded from incorporation.</u>	40 CFR section 265.70(b) is obsolete and is being excluded from incorporation. The sections it refers to apply independently.
11-265.1-10(c)(3)	In 40 C.F.R. section [265.147(i)(4)(ii),] <u>265.147(i)(4)</u> , 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”.	Clarifies the location of the incorporated federal text that state changes are applied to.
11-266.1-2(a)(1)	“Administrator”, “appropriate EPA Regional Administrator”, “Assistant Administrator”, “Assistant Administrator for Solid Waste and Emergency Response”, “EPA Administrator”, “EPA Regional Administrator”, “EPA Regional Administrator for the Region in which the healthcare facility is located”, <u>“EPA Regional Administrator for the Region in which the reverse distributor is located”</u> , “Regional Administrator”, and “State Director” shall be replaced with “director”.	Corrects an oversight in the state’s June 7, 2021 incorporation of EPA’s Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine rule (84 FR 5816). “EPA Regional Administrator for the Region in which the reverse distributor is located” is replaced by “department of health” in the state rules.
11-266.1-18(g)	Add (4): <u>In 40 C.F.R. section 266.506(b)(3)(iii) and (iv), replace the final period with “; or”.</u>	Corrects punctuation.