UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed February 01, 2020, 12:00 a.m. through February 14, 2020, 11:59 p.m.

Number 2020-05
March 01, 2020

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit https://rules.utah.gov/ for additional information.

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between February 01, 2020, 12:00 a.m., and February 14, 2020, 11:59 p.m. are included in this, the March 01, 2020, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 31, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 29, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the* **RULE ANALYSIS** *for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-108**	**Filing No. 52547**

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Annual Assurance of Compliance by Local School Boards

3. Purpose of the new rule or reason for the change:

This rule is being amended to update the version of the document incorporated by reference.

4. Summary of the new rule or change:

The amendments include updates to the Annual Assurances Document incorporated by reference to be the January 2020 version of the document.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. It changes the date to incorporate by reference the Local Education Agency (LEA) Compliance and Assurance Checklist for the 2020-2021 School Year instead of the 2019-2020 School Year. LEAs submit this compliance document annually. This rule does not change that requirement. It updates the dates for the 2020-2021 school year.

B) Local governments:

This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. It changes the date to incorporate by reference the LEA Compliance and Assurance Checklist for the 2020-2021 School Year instead of the 2019-2020 School Year. LEAs submit this compliance document annually. This rule does not change that requirement. It updates the dates for the 2020-2021 school year.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have material fiscal impacts on small businesses' revenues or expenditures. It changes the date to incorporate by reference the LEA Compliance and Assurance Checklist for the 2020-2021 School Year instead of the 2019-2020 School Year. LEAs submit this compliance document annually. This rule does not change that requirement. It updates the dates for the 2020-2021 school year.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have material fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It changes the date to incorporate by reference the LEA Compliance and Assurance Checklist for the 2020-2021 School Year instead of the 2019-2020 School Year. LEAs submit this compliance document annually. This rule does not change that requirement. It updates the dates for the 2020-2021 school year.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. The rule change changes the date to reflect the 2020-2021 school year, but otherwise the requirements for LEAs remains unchanged.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-7-202

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:

	First Incorporation
Official Title of Materials Incorporated (from title page)	LEA Compliance and Assurance Checklist
Publisher	State Board of Education – Financial Operations
Date Issued	February 6, 2020
Issue, or version	2019-2020

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and

will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Director	**Date:**	02/13/2020

R277. Education, Administration.
R277-108. Annual Assurance of Compliance by Local School Boards.
R277-108-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

(2) The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-2. Definitions.

(1) "Assurance document" means the Annual Assurances of Compliance list outlined in Subsection R277-108-3.

R277-108-3. Incorporation of Annual Assurances of Compliance.

(1) This rule incorporates by reference the Local Education Agency (LEA) Compliance and Assurance Checklist for [~~2019-2020~~]2020-2021 School Year [~~(09/06/2019)~~](02/06/2020), which lists the required state and federal compliance information for identified programs and funds, including:

(a) Board Rule;

(b) State statute;

(c) Federal Code of Regulations; and

(d) Federal Law.

(2) A copy of the current Annual Assurances of Compliance List is located at:

(a) https://www.schools.utah.gov/financialoperations/formsapplications?mid=2382&tid=2; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-108-4. Assurance Document Creation and Availability.

(1) The Superintendent shall provide a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 1 of each year to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school directors.

(2) The list described in Subsection (1) shall be approved by the Board and shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance document.

(3) The Superintendent shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible and ensure the assurance document is available publicly.

R277-108-5. Process, Procedures, and Penalties.

(1) An LEA shall submit the required annual responses to the assurance document and other compliance forms on or before dates identified by the Board.

(2) An LEA's assurance document shall contain a signed attestation by the appropriate authority attesting to the accuracy and validity of all responses and assurances provided by an LEA.

(3) In the event that an LEA is unable to provide required assurances, compliance information or forms by required dates, an LEA shall provide to the Superintendent a written explanation of the LEA's inability and provide an anticipated submission date.

(4) An LEA's request for additional time to provide the assurance shall be reviewed by the Superintendent and accepted or rejected in a timely manner.

(5) The Superintendent shall request a written explanation from an LEA and identified schools that fail to meet the reporting and compliance deadlines and that have not provided an explanation and request for a delayed submission date.

(6) Following an opportunity to provide explanations and request a delayed submission date, an LEA and identified schools shall be notified of penalties assessed by the Board against the LEA in accordance with rule R277-114, state law, or federal law.

R277-108-6. Reporting Deadlines.

Responses for the assurance document from an LEA are due to the Superintendent no later than July 1 of each year.

R277-108-7. Record Retention.

(1) Responses to the assurance document, as required by the Board, shall be kept on file by the Superintendent for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance
Date of Enactment or Last Substantive Amendment: [~~November 29, 2018~~]2020
Notice of Continuation: September 13, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-121**	**Filing No. 52556**

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	
Name:	**Phone:** **Email:**

Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Board Waiver of Administrative Rules

3. Purpose of the new rule or reason for the change:

This rule is being amended to update the Utah State Board of Education's (Board's) process to consider and approve waivers from Board rule for local education agencies (LEAs) that request a waiver as allowed by Section 53G-7-202, which allows the Board to grant an LEA's request for a waiver from a Board rule. In Fall 2019, during a discussion of an LEA's request for a waiver, the Committee asked staff to update the rule. Board staff solicited feedback for changes to Rule R277-121 from various stakeholders and brought a draft rule back to the Committee in December 2019.

4. Summary of the new rule or change:

The amendments to Rule R277-121 update the Board's process, including updating the required information to be included in an LEA's request for a waiver and incorporating language on emergency waivers previously found in Board Rule R277-419. The rule was also amended to allow the Superintendent to grant a waiver for two days or more without Board approval if the waiver is due to snow, inclement weather, or another emergency. It also provides an appeal to the Board if the Superintendent denies an LEA's request for a waiver due to snow, inclement weather, or another emergency.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. Board staff recently met with stakeholders to get feedback on the Board's waiver process and this rule is being amended based on that feedback. It adds community, staff, or survey data, or student enrollment data from LEAs to support the requested waiver. Currently, this rule only identifies student achievement data to support the requested waiver. This rule change also clarifies that the Superintendent shall review a waiver request and may provide a recommendation to the Board. The change also stipulates a process for snow, inclement weather, or other emergency school closure days whereby an LEA may seek a waiver directly from the Superintendent from the 180 day requirement. The Board's waiver process does not impact state government revenues or expenditures.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Board staff recently met with stakeholders to get feedback on the Board's waiver process and this rule is being amended based on that feedback. It adds community, staff, or survey data, or student enrollment data from LEAs to support the requested waiver. Currently, this rule only identifies student achievement data to support the requested waiver. This rule change also clarifies that the Superintendent shall review a waiver request and may provide a recommendation to the Board. The change also stipulates a process for snow, inclement weather, or other emergency school closure days whereby an LEA may seek a waiver directly from the Superintendent from the 180 day requirement.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. Board staff recently met with stakeholders to get feedback on the Board's waiver process and this rule is being amended based on that feedback. It adds community, staff, or survey data, or student enrollment data from LEAs to support the requested waiver. Currently, this rule only identifies student achievement data to support the requested waiver. This rule change also clarifies that the Superintendent shall review a waiver request and may provide a recommendation to the Board. The change also stipulates a process for snow, inclement weather, or other emergency school closure days whereby an LEA may seek a waiver directly from the Superintendent from the 180 day requirement. The Board's waiver process does not impact small businesses revenues or expenditures.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have material fiscal impact on revenues or expenditures small businesses,

businesses, or local government entities. Board staff recently met with stakeholders to get feedback on the Board's waiver process and this rule is being amended based on that feedback. It adds community, staff, or survey data, or student enrollment data from LEAs to support the requested waiver. Currently, this rule only identifies student achievement data to support the requested waiver. This rule change also clarifies that the Superintendent shall review a waiver request and may provide a recommendation to the Board. The change also stipulates a process for snow, inclement weather, or other emergency school closure days whereby an LEA may seek a waiver directly from the Superintendent from the 180 day requirement. The Board's waiver process does not impact revenues or expenditures for persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. The rule changes add clarification to the Board waiver process.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-7-202

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After

the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superindendent	**Date:**	02/13/2020

R277. Education, Administration.
R277-121. Board Waiver of Administrative Rules.
R277-121-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;[~~and~~]

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law[~~.~~]; and

(c) Section 53G-7-202, which allows the Board to grant an LEA's request for a waiver from a Board rule.

(2) The purpose of this rule is to establish procedures for an LEA to request a waiver from a Board rule.

R277-121-2. Procedures for Waiver Requests.

(1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.

(b) [~~A~~]Except for a request for a waiver due to snow, inclement weather, or other emergency school closure described in Section R277-121-5, a written request under Subsection (1)(a) shall include:

(i) verification that the LEA board voted to request the waiver in an open meeting;

(ii) [~~student achievement~~]data that support[~~s~~] the requested waiver[~~:~~], which may include:

(A) student achievement data;

(B) community, staff, or student survey data;

(C) student enrollment data; or

[~~(iii)~~](D) data demonstrating the cost effectiveness of the waiver request;

[~~(iv)~~](iii) a proposed agreement with the Board that includes:

(A) a proposed effective date;

(B) provisions for public review and accountability;

(C) data gathering and reporting timelines; and

(D) a sunset date; and

[~~(v)~~](iv) in the case of a charter school, a recommendation from the board of the school's authorizer.

(2) An LEA board may not request a waiver from a Board rule:

(a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;

(b) that would negatively affect the health, safety, or welfare of public education students;

(c) that could reasonably result in discrimination or harassment of public school students or employees;

(d) that would benefit one element of the public education system to the detriment of another; or

(e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

R277-121-3. Board Review of Waiver Requests.

(1) The Superintendent shall:

(a) review an LEA's waiver request; and

(b) may provide a recommendation to the Board.

[~~(1)~~](2) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.

[~~(2)~~](3) The standing committee assigned in accordance with Subsection [~~(1)~~](2):

(a) may solicit additional information or testimony;

(b) shall review the request in an open meeting; and

(c) shall make a recommendation for consideration by the full Board.

[~~(3)~~](4) The Board Executive Committee may consolidate consideration of duplicate or similar requests.

[~~(4)~~](5) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

R277-121-4. Annual Review of Approved Waivers.

(1) [~~An~~]The Board may request an LEA that receives a waiver from Board rule in accordance with this R277-121 for more than one year [~~shall annually~~]to report the following to a Board committee:

(a) [~~student achievement~~]data that supports continuation of the requested waiver; and

(b) data related to the data the LEA presented as apart of the LEA's request for waiver.[~~and~~

~~(b) data demonstrating the cost effectiveness of the waiver, if applicable.~~]

R277-121-5. Snow, Inclement Weather, or Other Emergency School Closure Days.

(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:

(a) the LEA closes a school due to excessive snow, inclement weather, or an other emergency; and

(b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.

(2) The Superintendent may grant a waiver due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided contingency school days and hours into the LEA's calendar as required in Subsection R277-419-4(5), or has another plan in place to minimize the negative impact on the educational process caused by the waiver.

(3)(a) An LEA may request the Superintendent to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (3) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Superintendent as described in this Subsection (3) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted as described in this Subsection (3) shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Superintendent may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) An LEA request for a waiver due to snow, inclement weather, or other emergency school closure described in this Section is not required to include the information described in Subsections R277-121-2(1)(b)(ii) through (iv) unless requested by the Superintendent.

(5) If the Superintendent denies an LEA's request described in this Section, the LEA may appeal the Superintendent's decision by making the request of the full Board.

KEY: Utah State Board of Education, waivers, administrative rules
Date of Enactment or Last Substantive Amendment: [~~August 7, 2017~~]2020
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-459**	**Filing No. 52576**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Teacher Supplies and Materials Appropriation

3. Purpose of the new rule or reason for the change:

This rule is being amended to update the distribution of teacher supplies and materials money to educators.

4. Summary of the new rule or change:

The amendments clarify timing and procedures for distributing classroom supply money to teachers. This change also makes stylistic and technical updates.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. Teacher Supplies and Materials are funded through a legislative appropriation and this rule change does not change the appropriation for the program.

B) Local governments:

This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. Teacher Supplies and Materials are funded through a legislative appropriation and this rule change does not change the appropriation for the program. The Superintendent shall continue to distribute the funds to local education agencies (LEAs) based on data submitted to the Computer Aided Credentials of Teachers in Utah System (CACTUS) database so the mechanism for the distribution of funds will remain consistent. This rule change does clarify that LEAs shall ensure that classroom teachers receive their proportionate share by the later of August 15th annually or within two weeks of hire. This timeline clarification will not affect local governments' revenues or expenditures.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have material fiscal impacts on small businesses' revenues or expenditures. Teacher Supplies and Materials are funded through a legislative appropriation and this rule change does not change the appropriation for the program.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***):

This rule change is not expected to have material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Teacher Supplies and Materials are funded through a legislative appropriation and this rule change does not change the appropriation for the program.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. This rule change clarifies the timeline for the distribution of funds, but does not impact compliance requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-7-202

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	**Date:**	02/13/2020

R277. Education, Administration.
R277-459. Teacher Supplies and Materials Appropriation.
R277-459-[~~1~~]2. Definitions.

[~~A. "Board" means the Utah State Board of Education.~~

~~B. "Classroom teacher" definition criteria:~~

~~(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.~~

~~(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.~~

~~(3) Teachers shall be employed for an entire contract period.~~

~~(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.~~

~~C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

~~(3) endorsements;~~

~~(4) employment history;~~

~~(5) professional development information; and~~

~~(6) a record of disciplinary action taken against the educator. All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.~~

~~D. "Field trip" means a district, or school authorized excursion for educational purposes.~~

~~E. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~F. "Teaching supplies and materials" means both consumable and nonconsumable items that are used for educational purposes by teachers in classroom activities and may include such items as:~~

~~(1) paper, pencils, workbooks, notebooks, supplementary books and resources;~~

~~(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;~~

~~(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;~~

~~(4) The definition of teaching supplies and materials should be broadly construed in so far as the materials are used by the teacher for instructional purposes or to protect the health of teachers in instructional or lab settings, or in conjunction with field trips.~~

~~G. "USOE" means the Utah State Office of Education.~~]

(1) "Classroom teacher" means a teacher who:

(a) is assigned by an LEA in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by an LEA;

(b) is licensed, and paid on an LEA's salary schedule;

(c) is employed for an entire contract period; and

(d) is primarily responsible to provide instruction or a combination of instructional and counseling services to students in public schools.

(2)(a) "Comprehensive Administration of Credentials for Teachers in Utah Schools file or "CACTUS file" means the electronic file maintained by the Superintendent on all licensed Utah educators.

(b) A CACTUS file includes:

(i) personal directory information;

(ii) educational background;

(iii) endorsements;

(iv) employment history;

(v) professional development information; and

(vi) a record of disciplinary action taken against the educator.

(c) All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

(3) "Field trip" means a district, or school authorized excursion for educational purposes.

(4) "LEA" for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(5) "Teaching supplies and materials" means both consumable and nonconsumable items that are used for educational purposes by teachers in classroom activities as approved by the LEA.

R277-459-[~~2~~](1). Authority and Purpose.

[~~A.~~](1) This rule is authorized [~~under~~]by:

(a) Utah Constitution Article X, Section 3, which gives general control and supervision of the public school system to the Board[~~,~~]; [~~by~~]

(b) Subsection 53E-3-501(1)(b), which directs the Board to establish rules and minimum standards for school programs[~~,~~]; and by [~~state legislation~~]

(c) intent language included in 2017 H.B. 2, Public Education Budget Amendments, which [~~provides a designated~~]required the Board to establish a rule governing allowable expenditures of teacher classroom supplies and materials money appropriation[~~ for teacher supplies and materials~~].

[~~B.~~](2) The purpose of this rule is to establish guidelines regarding the [~~distribute money through LEAs to classroom teachers for school~~]materials, supplies[~~,~~] and money.[~~ field trips, and purposes or equipment that protect the health of teachers in instructional or lab settings or in conjunction with field trips.~~]

R277-459-3. Distribution of Funds.

[~~A.~~](1) The [~~Board may~~]Superintendent shall distribute funds to LEAs based on data submitted to the CACTUS database.

[~~B. LEAs shall distribute funds for classroom supplies consistent with the amounts for salary schedule steps and teaching assignments as appropriated.~~

~~C.~~](2) Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. LEAs and other eligible schools may develop policies, procedures and timelines to facilitate the intent of the appropriation.

[~~D.~~](3)(a) [~~Each~~]An LEA shall ensure that each [~~eligible individual~~]returning classroom teacher[~~has the opportunity to~~] receives the teacher's proportionate share of the appropriation by August 15 annually. [~~If the appropriation is not sufficient to provide each teacher the full amount allowed by law, teachers on salary steps one through three shall receive the full amount allowed with the remaining money apportioned to all other teachers.~~]

(b) An LEA shall ensure that each newly hired classroom teacher receives the teacher's proportionate share of the appropriation by the later of:

(i) August 15 annually; or

(ii) within two weeks of hire.

[~~E.~~](4) If a teacher has not spent or committed to spend the individual allocation by April 1, the school or LEA may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following year.

[~~F.~~](5) These funds shall supplement, not supplant, existing funds for identified purposes.

[~~G.~~](6) These funds shall be accounted for by the LEA or eligible school using state and school district procurement and accounting policies.

[~~H.~~](7)(a) The funds and supplies purchased with the funds are the property of the LEA.

[~~(1)~~](b) Employees do not personally own materials purchased with designated public funds.

[~~(2)~~](c) An LEA may by policy allow individual teachers to use supply funds to protect teacher health with consumable materials that may not be able to be reused by the school.

(8) An LEA may distribute funds to eligible teachers through a Board-approved competitively-bid software solution procured using Board funds.

R277-459-4. Other Provisions.

[~~A.~~](1) [~~LEAs shall allow, but not require, teachers to jointly use their allocations.~~]A classroom teacher may combine the classroom teacher's allocation with another classroom teacher to buy supplies or materials.

[~~B.~~](2) An LEA[~~s~~] may carry over these funds, if necessary.

KEY: teachers, supplies
Date of Enactment or Last Substantive Amendment: [~~June 8, 2015~~]2020
Notice of Continuation: May 1, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(b)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-702**	**Filing No. 52559**

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200

Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Procedures for the Utah High School Completion Diploma

3. Purpose of the new rule or reason for the change:

This rule is being amended to update current terminology and remove a section of the rule that is no longer needed due to changes being proposed to Rule R277-733. (EDITOR'S NOTE: The proposed amendment to Rule R277-733 in under ID No. 52560 in this issue, March 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

This rule updates the "Exam Application for 16-18 Year old Non-Graduates" to "Candidate and Adult Education Eligibility Form." This rule also removes sections related to the "High School Equivalence exam" because those sections are no longer correct and have been moved and modified in edits proposed to Rule R277-733.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. The proposed amendments bring this rule in line with amendments to Rule R277-733.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The proposed amendments bring this rule in line with amendments to Rule R277-733.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The proposed amendments bring this rule in line with amendments to Rule R277-733.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The proposed amendments bring this rule in line with amendments to RuleR277-733.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. The proposed amendments bring this rule in line with amendments to Rule R277-733.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(b)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	**Date:**	02/13/2020

R277. Education, Administration.
R277-702. Procedures for the Utah High School Completion Diploma.
R277-702-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-501(1)(b), which directs the Board to adopt rules regarding access to programs, competency levels, and graduation requirements; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law.

(2) The purpose of this rule is to describe the standards and procedures required for an individual to obtain a Utah High School Completion Diploma.

R277-702-2. Definitions.

(1) "High school equivalency exam" or "HSE exam" means a Board approved examination whose test modules are aligned with:

(a) current high school core standards; and

(b) [~~adult education~~]the [~~C~~]college and [~~C~~]career [~~R~~]readiness [~~S~~]standards for adult education.

(2) "Out-of-school youth" means an individual 16 to 19 years of age whose high school cohort has not graduated and who is no longer enrolled in a K-12 program of instruction.

(3) "Utah high school completion diploma" means a completion diploma issued by the Board and distributed by a Board-approved contractor, to an individual who has passed all subject modules of the HSE exam at a Utah HSE exam testing center.

R277-702-3. Administrative Procedures and Standards for Testing and Certification.

(1)(a) The Superintendent shall contract with a third party contractor in accordance with state procurement law to administer HSE exams in the state.

(b) The Superintendent may contract with public non-profit institutions within the state to administer HSE exams and provide related testing services.

(c) The Superintendent shall determine the number and location of the institutions designated as testing centers in a manner that ensures that the test is reasonably accessible to potential applicants.

(d) The Superintendent shall develop requirements for HSE exam testing centers in conjunction with the contractor approved in accordance with Subsection (1)(a).

(2) The Superintendent shall develop minimum scores required for passing an HSE exam in conjunction with a vendor chosen in accordance with Subsection (1)(a).

(3) The Superintendent shall award a diploma to a candidate who receives a passing score on an HSE exam.

R277-702-4. Eligibility for HSE Testing.

(1) Any individual may take a Utah HSE exam regardless of:

(a) race;
(b) color;
(c) national origin;
(d) gender;
(e) disability; or
(f) state of residency.

(2) A candidate for the HSE exam:

(a) shall be at least 16 years of age; and

(b) may not be enrolled in any Utah k-12 school.

(3) A 16-year-old candidate shall submit a completed state of Utah HSE Candidate and Adult Education Eligibility Form[~~Exam Application for 16-18 Year Old Non-Graduates~~], which shall include:

(a) verification in a manner approved by the Superintendent that the candidate is not enrolled in a school;

(b) verification that the candidate understands and accepts the consequences and educational choices associated with the candidate's withdrawal from a K-12 program of instruction, including the prohibition from returning to a K-12 program anywhere in Utah upon successful passing of an HSE exam; and

(c) signed acknowledgment from the candidate's parent or guardian specifically stating that the candidate and parent or guardian:

(i) understand and accept the consequences and educational choices associated with the candidate's decision to withdraw from a K-12 program of instruction; and

(ii) authorize the candidate to take an HSE exam; and

(d) verification from a representative of a Utah state-sponsored adult education district program that the candidate demonstrates academic competencies to meet with success in passing the HSE exam.

(4) A 16 year-old candidate may provide a marriage certificate in lieu of the requirement of Subsection (3)(c) if the candidate is married.

(5) A 17 or 18 year-old candidate whose cohort has not graduated shall submit a state of Utah HSE Candidate and Adult Education Eligibility Form[~~exam Application for 16-18 Year Old Non-Graduates~~], which shall include:

(a) verification in a manner approved by the Superintendent that the candidate is not enrolled in school; and

(b) the signature of the candidate's parent or guardian authorizing the test.

(6) A candidate may submit a marriage certificate in lieu of the requirement contained in Subsection (5)(b) if the candidate is married.

(7) An out-of-school youth of school age who has not successfully passed all HSE exam modules shall be allowed to return to a k-12 public school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the

traditional k-12 diploma shall be completed prior to issuance of a regular high school diploma.

(8) An out-of-school youth of school age who has received a Utah high school completion diploma is not eligible to return to a k-12 public school unless it is required for provision of a free appropriate public education under the Individuals with Disabilities Education Act, 20 U.S.C., Chapter 33.

[~~(9) The Superintendent shall classify an out-of-school youth of school age who has successfully passed all HSE exam modules and received a Utah high school completion diploma as a graduate for k-12 graduation annual yearly progress outcomes.~~

~~(10) An individual who is required by an employer or higher education institution to provide academic competency and cannot offer proof of high school completion may, upon approval of the Superintendent, take an HSE exam.~~

~~(11) An individual who has previously passed HSE exam modules but seeks higher HSE exam scores for specific post-secondary institution admission may seek permission to retake an HSE exam module from the Superintendent.~~]

R277-702-5. Fees.

(1) The Superintendent, with approval of the Board, shall adopt uniform fees for the Utah high school completion diploma and uniform forms, deadlines, and accounting procedures to administer this program for inclusion with the contract with the contractor identified in accordance with Subsection R277-702-3(1)(a).

(2) An approved testing center may only collect a fee in accordance with the amounts and procedures approved pursuant to Subsection (1).

R277-702-6. Official Transcripts.

(1) The Board shall accept HSE exam scores when an original score is reported by:

(a) a Board-approved HSE exam testing center;

(b) the transcript service of the Defense Activity for Non-Traditional Educational Support;

(c) a Veterans Administration hospital or center; or

(d) a contractor selected by the Superintendent in accordance with Subsection R277-702-3(1)(a) or the contractor's authorized agent.

(2) The Superintendent shall include a candidate's HSE exam result on the candidate's official transcript.

R277-702-7. Adult High School Outcomes.

(1) A local board of education may adopt standards and procedures for awarding up to five units of credit on the basis of test results which may be applied toward an adult education secondary diploma only if the student was enrolled in an adult education program prior to July 1, 2009 and an approved HSE exam was transcripted prior to July 1, 2009.

(2) An individual who took and passed an approved HSE exam prior to January 1, 2002 may enroll in an adult education program now and in the future to obtain an adult education secondary diploma upon completion of graduation requirements as defined in Rule 277-733, but may not apply for a previously issued HSE exam certificate to be converted to a Utah high school completion diploma.

(3) An individual who took and passed an approved HSE exam in the state of Utah between the dates of January 1, 2002 and June 30, 2009 may apply for a Utah high school completion diploma to replace the originally issued HSE exam certificate issued by the Board or they may enroll in an adult education program to complete the necessary requirements for an adult education secondary diploma.

R277-702-8. HSE Exam Security.

(1) The following individuals may have access to the HSE exam:

(a) Board staff approved by the Superintendent;

(b) Authorized test examiners;

(c) A contractor selected pursuant to Subsection R277-702-3(1)(a) and the contractor's agents;

(d) Approved exam candidates during exam administration; or

(e) An individual granted access in writing by the Superintendent.

(2) A test facilitator shall administer an HSE exam in strict accordance with procedures and guidelines specified by the Superintendent and the contractor approved in accordance with Subsection R277-702-3(1)(a).

(3) School staff members may not:

(a) provide a student directly or indirectly with specific questions or answers from any official HSE exam;

(b) allow a student access to any testing material, in any form, prior to test administration; or

(c) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of an exam score of any individual student or group taking an HSE exam.

(4) A licensed educator who intentionally violates this Section R277-702-8 may be subject to disciplinary action under Section 53E-6-604 and R277-515.

KEY: adult education, educational testing, student competency
Date of Enactment or Last Substantive Amendment: [~~March 14, 2017~~]2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(b); 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-714**	**Filing No. 52577**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Unsafe School Choice Option

3. Purpose of the new rule or reason for the change:

Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. The overarching goal is to increase school choice options for students who are attending an unsafe school as determined by this definition.

4. Summary of the new rule or change:

This rule creates a definition for a "persistently dangerous school" and the process a local education agency (LEA) must follow if the LEA has a school that fits this definition.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule is not expected to have an independent fiscal impact on state government revenues or expenditures. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

B) Local governments:

This proposed rule is not expected to have an independent fiscal impact on local governments' revenues or expenditures. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have an independent fiscal impact on small businesses' revenues or expenditures. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This rule change is not expected to have an independent fiscal impact on non-small businesses' revenues or expenditures. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have an independent fiscal impact for persons other than small businesses, businesses, or local government entities. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. Federal code requires that in order to receive federal funds all states must create a definition for a "persistently dangerous school" and allow students of a school that fits this definition to choose, without penalty, a different school to attend. This rule creates a definition for a "persistently dangerous school" and the process an LEA must follow if the LEA has a school that fits this definition.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	**Date:**	02/14/2020

R277. Education, Administration.
R277-714. Unsafe School Choice Option.
R277-714-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) a definition of persistently dangerous school as required by 20 USC 7912; and

(b) a process for complying with federal law when a school within the LEA is designated as persistently dangerous.

R277-714-2. Definitions.

(1) "Persistently dangerous school" means a school where at least 3% of students for three consecutive school years have been suspended or expelled for:

(a) a reported violent criminal offense that took place:

(i) on school property; or

(ii) at a school sponsored activity.

(b) a federal gun free school violation as defined in 20 USC 7961.

(2) "Violent criminal offense" means any of the following if the crime has been reported to law enforcement and a charge has been filed:

(a) actual or attempted criminal homicide as defined in Section 76-5-201;

(b) rape as defined in Section 76-5-402 through 76-5-402.3;

(c) aggravated sexual assault as defined in 76-5-405;

(d) forceable sexual abuse as defined in 76-5-404;

(e) aggravated sexual abuse of a child as defined in 76-5-404.1;

(f) aggravated assault as defined in 76-5-103; or

(g) robbery as defined in 76-6-301.

R277-714-3. LEA Notification to Parents -- Transfer.

(1) If an LEA has a school designated by the Superintendent as persistently dangerous, the LEA or school shall provide to the Superintendent:

(a) a copy of the school and LEA's safety plan;

(b) a document outlining the local efforts to address school safety concerns; and

(c) relevant school safety data requested by the Superintendent.

(2) An LEA shall provide the designated school's information described in Subsection R277-714-3(1) within 30 days of receiving notice that the school has been designated as persistently dangerous.

(3) If an LEA has a school that is designated persistently dangerous, the LEA shall provide written notice within 15 days of the school's notice that is persistently dangerous:

(a) that the school has been designated as persistently dangerous, including the criteria that caused the school to be designated as persistently dangerous;

(b) that a parent may transfer the parent's student to a safer school within the LEA if the parent chooses; and

(c) the timeline and deadline for transfer of the parent's student, which may not exceed 30 days after a parent's receipt of notice of a school's designation.

R277-714-4. Action Plan Content and Implementation.

(1) An LEA with a school that has been designated as persistently dangerous shall create an action plan and submit the plan to the Superintendent as specified by the Superintendent.

(2) At minimum, the LEA's action plan shall include how the LEA will:

(a) provide additional personnel and staff to supervise students;

(b) provide conflict resolution training and additional discipline training for staff of the school designated as persistently dangerous;

(c) collaborate with the applicable local law enforcement agency; and

(d) implement additional security measures for the school.

(3) An LEA with a school designated as persistently dangerous that fails to comply with any portion of this Rule R277-714 may be subject to a corrective action plan as described in Rule R277-114.

KEY: school choice; persistently dangerous school
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-733**	**Filing No. 52560**

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Adult Education Programs

3. Purpose of the new rule or reason for the change:

This rule is being amended to bring this rule into compliance with the rulewriting manual style guide. The amendments being made also eliminate redundant language that is already found in the Adult Education Policy and Procedure manual which this rule incorporates by reference.

4. Summary of the new rule or change:

This rule incorporates by reference the Adult Education Policy and Procedure Manual and makes conforming and technical edits.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. Adult Education is funded through a legislative appropriation. This rule change will not change the appropriation for the program. The amendment allows for more appropriate budgeting by local education agencies (LEAs) for long-term needs and personnel obligations. As an example, an LEA with multiple million-

dollar allocations has been asked to budget within $50,000. This requirement is extremely restrictive and falls outside of normal budgeting expectations. The amendment is also consistent with other State Board of Education (Board) rules.

B) Local governments:

This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. Adult Education is funded through a legislative appropriation. This rule change will not change the appropriation for the program nor will it change how the funding is allocated among LEAs. The amendment allows for more appropriate budgeting by LEAs for long-term needs and personnel obligations. As an example, an LEA with multiple million-dollar allocations has been asked to budget within $50,000. This requirement is extremely restrictive and falls outside of normal budgeting expectations. The amendment is also consistent with other Board rules.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. Adult Education is funded through a legislative appropriation. This rule change will not change the appropriation for the program.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Adult Education is funded through a legislative appropriation. This rule change will not change the appropriation for the program.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. This rule change does not change any requirements for compliance on the part of LEAs. It potentially changes the amount an LEA may carryover with written approval from the Superintendent.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not

expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.
B) Name and title of department head commenting on the fiscal impacts:
Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Article X, Section 3	Section 53E-10-202	Subsection 53E-3-401(4)
Subsection 53E-3-501(1)	Section 53F-2-401	

Incorporations by Reference Information
(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah Adult Education Policies and Procedures Guide
Publisher	Utah State Board of Education
Date Issued	February 6, 2020
Issue, or version	January 9, 2020

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	**Date:**	02/13/2020

R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-1. Authority and Purpose.
[~~(1) This rule is authorized by:~~
~~(a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;~~
~~(b) Section 53E-10-202 which vests general control and supervision over adult education in the Board;~~
~~(c) Subsection 53E-3-501(1), which allows the Board to adopt minimum standards for programs;~~
~~(d) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
~~(e) Section 53F-2-401, which vests the Board with responsibility to provide education to persons in the custody of the Utah Department of Corrections.~~
~~(2) The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.~~

~~**R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.**~~
~~(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.~~
~~(2) A copy of the guide is located at:~~
~~(a) https://www.schools.utah.gov/sas/aaed/adulteducation; and~~
~~(b) the Utah State Board of Education.~~

~~**R277-733-3. Definitions.**~~
~~(1) "Adult" means an individual 18 years of age or over.~~
~~(2) "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs:~~
~~(a) provided by LEAs or other eligible providers;~~
~~(b) affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah;~~
~~(c) provided for out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school; and~~
~~(d) provided to improve literacy levels and to further high school level education.~~
~~(3)(a) "Adult Basic Education" or "ABE" means a program of instruction at or below the 8.9 academic grade level, which prepares adults for advanced education and training, who lack competency in~~

reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society.

(b) ABE is designed to help adults by:

(i) increasing their independence;

(ii) improving their ability to benefit from occupational training;

(iii) increasing opportunities for more productive and profitable employment; and

(iv) making them better able to meet adult responsibilities.

(4) "Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Innovation Opportunity Act of 2014, which provides the principle source of federal support for:

(a) academic instruction and education services below the post-secondary level that increase an adult education student's ability to read, write and speak in English, and perform mathematics or other activities necessary for the attainment of a secondary diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

(5) "Adult High School Completion" or "AHSC" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

(6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

(a) is initiated at the time of entrance into an adult education program;

(b) identifies a student's skills and objectives;

(c) identifies a career pathway strategy to guide a student's course selection; and

(d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.

(7) "Desk monitoring" means the monthly review of UTopia data to ensure program integrity.

(8)(a) "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(i) is 17 years of age or older, and whose high school class has graduated;

(ii) is under 18 years of age and is married;

(iii) has been emancipated or adjudicated as an adult; or

(iv) is an out-of-school youth 16 years of age or older who has not graduated from high school and who:

(A) is basic skills deficient;

(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or

(C) is an ELL.

(b) A non-resident may be treated as an eligible adult education student in accordance with an individual agreement between an eligible provider and another state.

(9) "Eligible Provider" may include:

(a) an LEA;

(b) a community-based or faith-based organization;

(c) a voluntary literacy organization;

(d) an institution of higher education;

(e) a public or private non-profit agency;

(f) a library;

(g) a public housing authority;

(h) a non-profit institution not described in Subsections (a) through (g) that has the ability to provide adult education and literacy activities to eligible adult education students.

(i) a consortium or coalition of providers identified in Subsections (a) through (h); or

(j) a partnership between an employer and a provider identified in Subsections (a) through (i).

(10)(a) "Enrollee" means an adult student who has:

(i) 12 or more contact hours in an adult education program during a fiscal program year;

(ii) an academic assessment establishing an Entering Functioning Level; and

(iii) an adult education CCRP with an established goal and a defined funding code.

(b) An enrollee's status is based on the last date that the items set forth in Subsections R277-733-3(10)(a)(i) through (iii) were entered into UTopia.

(11) "English Language Learner" or "ELL" means an individual:

(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or

(b) who lives in a family or community where a language other than English is the dominant language.

(12)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program.

(c) All fees are subject to approval by an eligible provider's governing board.

(13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.

(14)(a) "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and who is counted in the regular school program, receiving instruction in both a traditional and adult education program.

(b) The Superintendent shall pro-rate and provide a credit to an adult education program for funds generated for an other eligible adult education student, weighted pupil unit (WPU) and collected fees.

(15) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

(16) "Teachers of English to Speakers of Other Languages" or "TESOL" means a credential for teachers of ELL students.

(17) "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by a Board approved contractor to an individual who has passed all subject modules of an HSE exam at an HSE testing center.

(18) "UTopia" means the Utah Online Performance Indicators for Adult Education statewide database.

(19)(a) "Waiver release form" means a form signed by an adult education student allowing for release of the student's CCRP and personal data, including social security number and HSE scores, for data matching purposes with partners including:

(i) the Department of Workforce Services;

(ii) higher education institutions;

(iii) the Utah State Office of Rehabilitation; and
(iv) a Board approved HSE contractor.
(b) A signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training, career planning, or other purposes if specified in the waiver release form.
(20) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-733-4. Federal Adult Education Funds.
The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer both federal and state funding of adult education programs.

R277-733-5. Program Standards.
(1) Adult education programs shall comply with state and federal law and administrative regulations and follow the procedures contained in the Utah Adult Education Policies and Procedures Guide.
(2) Adult education programs shall make reasonable efforts to:
(a) market and inform prospective students within their geographic areas of the availability of adult education programs; and
(b) provide enrollment information to prospective students.
(3)(a) Adult education programs may offer adult education services to a qualifying individual whose primary residence is located in communities closely bordering Utah if the student's circumstances are not conducive to commuting to the bordering state's closest adult education program.
(b) An adult education program shall not charge tuition to a student receiving services in accordance with Subsection (3)(a).
(4) Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.
(5)(a) Each eligible adult education student shall have a written CCRP defining the student's goals based upon:
(i) a complete academic assessment;
(ii) prior academic achievement;
(iii) work experience; and
(iv) an established entering functioning level.
(b) A designated program official shall review a student's plan and waiver release form annually with the student.
(6) Adult education staff shall only teach courses identified in R277-733-8.
(7) The Superintendent shall evaluate programs for compliance through:
(a) tri-annual site monitoring visits;
(b) monthly desk monitoring; and
(c) additional monitoring as needed.
(8) Adult education program staff, administrators, teachers, instructors, and counselors shall have appropriate qualifications for their assignments.
(9)(a) An eligible provider may consider a staff member's teaching certificate and endorsement in evaluating the appropriateness of the staff member's assignment.
(b) Notwithstanding Subsection (9)(a) an eligible provider may assign staff members to teach in circumstances not generally covered by their teaching certificate and endorsement under appropriate circumstances, such as placing an elementary teacher to teach adult students who are performing academically at an elementary level in certain subjects.
(c) An individual teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects.
(d) A non-licensed individual providing instruction in ELL, ABE, HSE preparation, or AHSC classes shall instruct under the supervision of a licensed program employee.
(10) A non-licensed individual with a post-secondary degree may only be considered for a teaching position by an eligible provider after approval for participation in the Alternative Route to Licensure program under R277-518 and R277-503-4; or
(11) An eligible provider may consider an individual for employment who has TESOL credentials in lieu of a Utah teaching license solely in an adult education program funded to provide ELL services.

R277-733-6. Fiscal Procedures.
(1) The Superintendent shall allocate state funds for adult education in accordance with Section 53F-2-401.
(2) No eligible LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:
(a) the LEA provided instructional services approved by the Board to eligible adult students during the preceding fiscal year; or
(b) the LEA is preparing to offer services to eligible adult students, provided that the LEA's preparation period does not exceed two years.
(3) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules and policies.
(4) An LEA may carry over to the next fiscal year ten percent or $50,000, whichever is less, of state adult education funds allocated to the LEA's adult education programs not expended in the current fiscal year with written approval from the Superintendent.
(5)(a) An LEA shall submit a request to carry over funds for approval by August 1 annually.
(b) The Superintendent shall prepare a revised budget incorporating approved carryover amounts no later than September 1 in the year requested.
(6) The Superintendent may consider excess funds in determining an LEA's allocation for the next fiscal year.
(7) The Superintendent shall recapture fund balances in excess of 10 percent or $50,000 no later than February 1 annually.
(8) The Superintendent shall reallocate funds recaptured in accordance with Subsection (7) to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Subsection 53F-2-401(3).
(9)(a) The Superintendent shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern state and federally funded adult education programs.
(b) The Superintendent shall update the Utah Adult Education Policies and Procedures Guide annually and make the guide available on the Board adult education website.
(10)(a) The Superintendent shall provide a competitive bidding process for an eligible provider to apply for federal adult education funds.
(b) The Superintendent shall only fund an eligible provider following an award under Subsection (10)(a) on a reimbursement basis.
(c) An eligible provider is subject to all laws and regulations regarding adult education funds, which are applicable to an LEA.

R277-733-7. Adult Education Pupil Accounting.

(1) A district administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil for a student who is a resident of a Utah school district and meets the following criteria:

(a) is at least 16 years of age but less than 19 years of age;

(b) has not received a high school diploma or a Utah High School Completion Diploma;

(c) intends to graduate from a K-12 high school; and

(d) attends a CCRP meeting with his school counselor, school administrator or designee, and parent or legal guardian to discuss the appropriateness of the student's participation in adult education; or

(2) A district may additionally receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil unit for a resident student who meets the following criteria:

(a) is 19 years of age or older;

(b) has not received a high school diploma but whose high school class has graduated;

(c) intends to graduate from a K-12 high school; and

(d) has written approval from all parties following consultation with the student's parent or guardian.

(2) Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

(3) The Superintendent shall prorate the clock hours of students enrolled part-time

(4) As an alternative, a district may generate equivalent WPUs for competencies mastered with a district plan approved by the Superintendent.

(5)(a) A student may only be counted in average daily membership once on any day.

(b) If a student's day is part-time in the regular school program and part-time in the adult education program, a district shall report the student's membership on a prorated basis for each program.

(c) A district may not receive funding for a student for more than one regular WPU for any school year.

(6) If an eligible adult education student as specified in R277-733-3(8)(a)(iv) enrolls in an adult education program:

(a) The district may not receive WPU funding for the student's participation in an adult education program;

(b) The student may be eligible for adult education state funding;

(c) The student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision, including the following:

(i) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program;

(ii) The student may earn a Utah High School Completion Diploma upon successful passing of an HSE exam; or

(iii) The student may, at the discretion of the district, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional k-12 diploma shall be completed, provided that the student:

(A) is released from the adult education program;

(B) has not completed the requirements necessary for an Adult Education Secondary Diploma; and

(C) has not successfully passed an HSE exam and has not received a Utah High School Completion Diploma;

(d) The student may not return to a k-12 high school after receiving an Adult Education Secondary Diploma;

(e) The student is not eligible to return to a k-12 high school after receiving a Utah High School Completion Diploma unless it is required for the provision of a free appropriate public education (FAPE) under the IDEA.

(f) A district shall report a student who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma as a graduate for k-12 graduation (AYP) outcomes.

(g) The student may take an HSE exam in accordance with the provisions of R277-702.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

(1) The Utah Adult Education Program shall offer courses consistent with the Elementary and Secondary General Core under R277-700.

(2) The core standards may be modified or adjusted to meet the individual needs of an adult education student.

(3) An LEA shall develop written course descriptions for AHSC required and elective courses for all adult education program classes taught, consistent with the core standards and Utah adult education college and career readiness standards, as provided by the Superintendent.

(4) The Superintendent, in cooperation with eligible providers, shall develop written course descriptions for HSE exam preparation, ELL and ABE courses based on Utah's core standards, modified for adult learners.

(5) Course descriptions shall stress content mastery rather than completion of predetermined seat time in a classroom.

(6) Adult high school completion education shall include the following prerequisite courses:

(a) ELL competency AEFLA levels one through six; or

(b) ABE competency AEFLA levels one through four.

(7) AHSC courses for students seeking an Adult Education Secondary Diploma shall meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits consistent with cores standards and adult education college and career readiness standards under the direction of a Utah licensed teacher as provided in the Utah Adult Education Policies and Procedures Guide.

(8) The Superintendent and eligible providers shall disseminate clear information regarding revised adult education graduation requirements.

(9) An adult education student receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and:

(a) completed credits;

(b) demonstrated course competency; or

(c) a Utah High School Completion Diploma with a successful passing score on an HSE exam consistent with the student's adult education CCRP.

(10) An eligible provider may modify Adult Education Secondary Diploma graduation requirements to meet unique educational needs of an adult student with:

(a) documented disabilities through an IEP from age 16 until the student's 22nd birthday; or

(b) an adult education CCRP.

(11) A student's IEP or adult education CCRP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disabilities.

(12) Modified graduation requirements for an individual student shall:

(a) be consistent with the student's IEP or CCRP;

(b) be maintained in the student's adult education files; and

(c) maintain the integrity and rigor expected for AHSC graduation.

(13) An LEA shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

(14) An adult education student may only receive an Adult Education Secondary Diploma earned through a Utah adult education program accredited through a Board-approved organization.

(15) An adult education program shall accept credits and grades awarded to a student without alteration from other accredited state-recognized adult education programs or eligible providers approved by the Superintendent.

(16) An adult education program may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from other eligible providers.

(17) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

(18) An adult education program shall provide instruction that allows a student to transition between sites in a seamless manner.

(19) An adult education program shall offer an adult education student seeking a Utah High School Completion Diploma a course of academic instruction designed to prepare the student to take an HSE exam.

(20) The Superintendent shall award a Utah High School Completion Diploma if a student passes an HSE exam.

(21) Notwithstanding receipt of the Utah High School Completion Diploma a student may still be entitled to a free appropriate public education under IDEA requirements.

(22) Following completion of requirements for a Utah Adult Education Secondary Diploma or a Utah High School Completion Diploma, an adult education student may only continue in an adult education program to improve their basic literacy skills if:

(a) the student's academic skills are less than 9.0 grade level in an academic area of reading, math or English;

(b) the student lacks sufficient mastery of basic educational skills to enable the student to function effectively in society; and

(c) the focus of the continued instruction is limited solely to literacy in reading, math or English for a maximum of 120 instructional contact hours.

R277-733-9. Adult Education Programs--Tuition and Fees.

(1) Any adult may enroll in an adult education class consistent with Section 53E-10-205.

(2) An eligible provider may charge tuition and fees for ABE, HSE exam preparation, AHSC, or ELL courses in an amount not to exceed $100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines under the Richard B. Russell National School Lunch Act, 42 USC Section 1751, et seq.

(3) A school board or board of trustees of an eligible provider shall determine reasonable and necessary student fees and tuition on an annual basis.

(4) An eligible provider shall provide potential adult education program students adequate notice of tuition and fees through public posting.

(5) An eligible provider shall specifically use collected fees and tuition to provide additional adult education and literacy services that the provider would otherwise be unable to provide.

(6) An eligible provider receiving state or federal adult education funds shall provide annual written assurances on a form approved by the Superintendent that all fees and tuition collected and submitted for accounting purposes are:

(a) returned or delegated with the exception of indirect costs to the local adult education program;

(b) used solely and specifically for adult education programming; and

(c) not withheld and maintained in a general maintenance and operation fund.

(7)(a) An eligible provider shall spend all collected fees and tuition generated from the previous fiscal year in the adult education program in the ensuing program year.

(b) A district may not use funds identified in Subsection (7)(a) in calculating carryover fund balance amounts.

(8) An eligible provider may not count collected fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the program's award.

(9) Annually, eligible providers shall report to the Superintendent all fees and tuition collected from students associated with each funding source.

(10) An eligible provider shall not commingle or report fees and tuition collected from adult education students with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

(1) The Superintendent shall distribute adult education state funds to an LEA offering adult education programs consistent with percentages defined in the Utah Adult Education Policies and Procedures Guide.

(2)(a) The Superintendent shall distribute supplemental support to an LEA adult education program with no carryover funds, which receives less than one percent of the state allocation as indicated on the state allocation table.

(b) The Superintendent shall accept and process applications for supplemental funds annually between October 15 and October 31.

(c) An LEA receiving supplemental support shall use the awarded funds for special program needs or professional development, as determined by the Superintendent's evaluation of the LEA's written request and need.

(d) An LEA may apply for the balance of supplemental funds for special program needs or professional development between November 1 and March 1 annually.

(e) Following review of a written request submitted pursuant to Subsection (d), the Superintendent shall distribute funds based on need.

(f) The Superintendent shall add recaptured LEA funds that are greater than allowable carryover amounts to the available supplemental funds awarded to adult education programs based on the criteria defined in Subsection 2(a) through (e).

(3)(a) Adult education federal AEFLA funds shall be distributed based on a competitive application.

(b) The Superintendent shall base second or subsequent year AEFLA funding on performance criteria established in the Utah Adult Education Policies and Procedures Guide.

(4) The Superintendent may recommend that the Board withhold state or federal funds for noncompliance with:

(a) Board rule;

(b) adult education state policy and procedures;

(c) associated reporting timelines; and

(d) program monitoring outcomes, as defined by the Board, including:

~~(i) lack of program improvement; and~~
~~(ii) unsuccessful student outcomes.~~

~~R277-733-11. Adult Education Records and Audits.~~
~~(1) An LEA shall maintain official records regarding an eligible adult education student in accordance with state retention schedules SD17-25 and SD-17-32.~~
~~(2) An eligible provider shall maintain records for each student to validate student outcomes annually in accordance with the Utah Adult Education Policies and Procedures Guide.~~
~~(3) To ensure valid and accurate student data, all programs accepting state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.~~
~~(4) An eligible provider shall annually retain an independent auditor to:~~
~~(a) audit student accounting records;~~
~~(b) verify UTopia data entries; and~~
~~(c) validate the cash controls over collection of student fees.~~
~~(5) An auditor retained pursuant to Subsection (4) shall submit a written report by September 15 annually to:~~
~~(a) the eligible provider's governing board or board of trustees;~~
~~(b) the Superintendent; and~~
~~(c) the local adult education program director, if appropriate.~~
~~(6) In the event of an audit finding of non-compliance with state or federal law, regulation, or policy, a program shall prepare and submit to the Superintendent a written corrective action plan for each audit finding by October 15 annually.~~
~~(7) The Superintendent shall monitor and assist a program in the resolution of a corrective action plan.~~
~~(8) The Superintendent may recommend that the Board terminate a program's state or federal funding for failure to resolve audit findings in accordance with R277-114.~~
~~(9) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to an eligible provider by the Superintendent in cooperation with the State Auditor's Office and published under the heading of APPC-5.~~
~~(10) The Superintendent may review for cause an eligible provider's records and practices for compliance with the law and this rule.~~

~~R277-733-12. State Workforce Development Board.~~
~~(1) The Superintendent shall represent adult education programs on the State Workforce Development Board as a voting member, in accordance with WIOA.~~
~~(2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to the purpose of implementation of the State's WIOA Unified Plan.~~

~~R277-733-13. Oversight, Monitoring, Evaluation, and Reports.~~
~~The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the Superintendent for oversight, monitoring, and evaluation of adult education programs and their compliance with law and regulation.~~]

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Section 53E-10-202 which vests general control and supervision over adult education in the Board;

(d) Subsection 53E-3-501(1), which allows the Board to adopt minimum standards for programs; and

(e) Section 53F-2-401, which vests the Board with responsibility to provide education to persons in the custody of the Utah Department of Corrections.

(2) The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.

(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, January 2020 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

(2) A copy of the guide is located at:

(a) https://schools.utah.gov/administrativerules/documentsincorporated; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-733-3. Definitions.

(1) "Adult" means an individual 18 years of age or over.

(2) "Adult education" means organized educational programs below the postsecondary level, other than regular full-time K-12 secondary education programs:

(a) provided by an LEA or an eligible provider;

(b) provided for out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school; and

(c) provided to improve literacy levels and to further high school level education.

(3) "Adult Basic Education" or "ABE" means a program of instruction at or below the 8.9 academic grade level, which prepares adults for advanced education and training.

(4) "Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Innovation Opportunity Act of 2014, which provides the principle source of federal support for:

(a) academic instruction and education services below the post-secondary level to receive a high school diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

(5) "Adult Secondary Education" or "ASE" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for an eligible adult education student who is seeking an Adult Education Secondary Diploma or its equivalent.

(6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with an adult education program counselor, teacher, and administrator that:

(a) is initiated at the time of entrance into an adult education program;

(b) identifies a student's skills and objectives;

(c) identifies a career pathway strategy to guide a student's course selection; and

(d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.

(7) "Custody," for purposes of this rule, means the status of being legally in the control of another adult person or public agency.

(8)(a) "Eligible adult education student" means an individual who provides documentation that the individual:

(i) is a primary and permanent resident of Utah;

(ii) is one of the following:

(A) 17 years of age or older, and whose high school class has graduated;

(B) under 18 years of age and is married;

(C) has been emancipated or adjudicated as an adult; or

(D) an out-of-school youth 16 years of age or older who has not graduated from high school; and

(iii) meets any of the following:

(A) is basic skills deficient;

(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or

(C) is an ELL; or

(b) A non-resident eligible adult education student in accordance with an individual agreement between an eligible provider and another state.

(9) "Eligible Provider" may include:

(a) an LEA;

(b) a community-based or faith-based organization;

(c) a voluntary literacy organization;

(d) an institution of higher education;

(e) a public or private non-profit agency;

(f) a library;

(g) a public housing authority;

(h) a non-profit institution not described in Subsections (a) through (g) that can provide adult education and literacy activities to eligible adult education students;

(i) a consortium or coalition of providers identified in Subsections (a) through (h); or

(j) a partnership between an employer and a provider identified in Subsections (a) through (i).

(10) "English Language Learner" or "ELL" means an individual:

(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or

(b) who lives in a family or community where a language other than English is the dominant language.

(11) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.

(12) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.

(13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.

(14) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

(15) "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by a Board approved contractor to an individual who has passed all subject modules of an HSE exam at an HSE testing center.

(16) "Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.

(17) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-733-4. Federal Adult Education Funds.

The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer federal funding of adult education programs.

R277-733-5. Compliance with State and Federal Laws.

Adult education programs shall comply with state and federal law and administrative regulations and follow the procedures contained in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-6. State Fund Distribution, Carryover, and Recapture.

(1) The Superintendent shall allocate state funds for adult education in accordance with Section 53F-2-401.

(2) An LEA may carryover ten percent of the state adult education funds allocated to the LEA's adult education programs with written approval from the Superintendent.

(3) An LEA shall submit a request to carryover funds for approval.

(4) The Superintendent shall consider excess funds in determining an LEA's allocation for the next fiscal year.

(5) The Superintendent shall recapture an LEA's fund balances in excess of ten percent annually.

(6) The Superintendent shall allocate recaptured funds to an LEA's adult education program through the supplemental award process described in Section R277-733-10.

R277-733-7. Adult Education Pupil Accounting.

(1) An LEA administered adult education program shall receive WPU funding for a student consistent with the criteria and rate outlined in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

(1) The Utah Adult Education Program shall offer courses consistent with the Elementary and Secondary General Core under R277-700.

(2) An LEA shall ensure adult secondary education includes the following prerequisite courses:

(a) ELL competency AEFLA levels one through six; or

(b) ABE competency AEFLA levels one through four.

(3) An LEA shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

(4) An LEA may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from other eligible providers.

(5) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

(6) An eligible provider shall offer an adult education student seeking a Utah High School Completion Diploma a course of

academic instruction designed to prepare the student to take an HSE exam.

(7) Following completion of requirements for a Utah Adult Education Secondary Diploma or a Utah High School Completion Diploma, an eligible provider shall only allow a student to continue in an adult education program if:

(a) the student's academic skills are less than 9.0 grade level in an academic area of reading, math or English; and

(b) the student lacks sufficient mastery of basic educational skills to enable the student to function effectively in society.

R277-733-9. Adult Education Programs--Tuition and Fees.

(1) An eligible provider may charge a tuition or fee consistent with Section 53E-10-205 and the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

(2) An eligible provider shall report annually to the Superintendent the amount of tuition and fees collected.

(3) An eligible provider may not:

(a) comingle or report fees and tuition collected from adult education students with community education funds or any other public education fund;

(b) count collected fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the adult education program's award; and

(c) calculate carryover balance amounts using funds collected from fees and tuition.

(4) An eligible provider receiving state or federal adult education funds shall provide annual written assurances to the Superintendent that all fees and tuition collected are:

(i) returned or delegated, except for indirect costs, to the local adult education program;

(ii) used solely and specifically for adult education programming; and

(iii) not withheld and maintained in a general maintenance and operation fund.

R277-733-10. Providing Corrections Education.

(1) The Board may contract to provide educational services inmates with:

(a) local school boards;

(b) state post-secondary educational institutions;

(c) other state agencies; or

(d) private providers recommended by a local school board.

(2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:

(a) services to students in an appropriate environment for student behavior and educational performance;

(b) compliance with relevant Board standards;

(c) program monitoring by the Superintendent in accordance with R277-733: and

(d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public-school education with minimal disruption following discharge.

(3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.

(4) Custodial status does not qualify an individual for services under the IDEA.

(5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

(6) An educational service provider shall only disclose educational records of a student inmate, before or after release from custody, consistent with FERPA.

(7) A transcript or diploma prepared for an inmate in custody shall:

(a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and

(b) not reference the inmate's custodial status.

(8) A corrections education provider shall keep an inmate's education records which refer to custodial status, inmate court records, and related matters separate from permanent school records.

R277-733-11. Supplemental Awards.

An LEA may receive a supplemental award if the LEA:

(1) has an adult education program with no carryover funds;

(2) demonstrates that the award funds will only be used for special program needs or professional development; and

(3) provides in writing the level of need for the award.

R277-733-12. State Workforce Development Board.

(1) The Superintendent shall represent adult education programs on the State Workforce Development Board as a voting member, in accordance with WIOA.

(2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees for the purpose of implementation of the State's WIOA Unified Plan.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

(1) The Board may designate up to two percent of the total legislative appropriation for oversight, monitoring, and evaluation of adult education programs.

(2) The Superintendent may recommend that the Board withhold state or federal funds in accordance with R277-114 for noncompliance with:

(a) Board rule;

(b) adult education state policy and procedures;

(c) associated reporting timelines; and

(d) program monitoring outcomes, as defined by the Board, including:

(i) lack of program improvement; and

(ii) unsuccessful student outcomes.

KEY: adult education
Date of Enactment or Last Substantive Amendment: [~~August 7, 2017~~]2020
Notice of Continuation: June 6, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-10-202; 53E-3-501(1); 53E-3-401(4); 53F-2-401; 53F-2-401; 53E-10-205

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R277-735**	**Filing No. 52561**

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S

City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Corrections Education Programs

3. Purpose of the new rule or reason for the change:

This rule is being repealed because the contract related to providing these services has expired and is not being renewed. The relevant provisions to continue existing actions related to corrections education has been incorporated into edits being proposed for Rule R277-733. (EDITOR'S NOTE: The proposed amendment to Rule R277-733 is under ID No. 52560 in this issue, March 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

This rule is being repealed in its entirety. Portions of Section R277-735-4 are being incorporated into edits being proposed to Rule R277-733.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule repeal is not expected to have material fiscal impact on state government revenues or expenditures. This language is being incorporated into Rule R277-733.

B) Local governments:

This rule repeal is not expected to have material fiscal impact on local governments' revenues or expenditures. This language is being incorporated into Rule R277-733.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule repeal is not expected to have material fiscal impact on small businesses' revenues or expenditures. This language is being incorporated into Rule R277-733.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule repeal is not expected to have material fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This language is being incorporated into Rule R277-733.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. This language is being incorporated into Rule R277-733.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-401

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020
10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	**Date:**	02/13/2020

R277. Education, Administration.

[~~R277-735. Corrections Education Programs.~~

~~R277-735-1. Authority and Purpose.~~

~~(1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~

~~(b) Section 53F-2-401, which makes the Board, along with the Utah Department of Corrections, responsible for the education of inmates in custody; and~~

~~(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.~~

~~(2) The purpose of this rule is to specify operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system.~~

~~R277-735-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.~~

~~(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.~~

~~(2) A copy of the guide is located at:~~

~~(a) https://www.schools.utah.gov/sas/aaed/adulteducation; and~~

~~(b) the Utah State Board of Education.~~

~~R277-735-3. Definitions.~~

~~(1) "Custody" means the status of being legally in the control of another adult person or a public agency.~~

~~(2) "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.~~

~~(3) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.~~

~~(4) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.~~

~~(5) "Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.~~

R277-735-4. Procedures for Providing Services.

(1) The Board may contract to provide educational services for inmates with:

(a) local school boards;

(b) state post-secondary educational institutions;

(c) other state agencies; or

(d) private providers recommended by a local school board.

(2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:

(a) services to students in an appropriate environment for student behavior and educational performance;

(b) compliance with relevant Board standards;

(c) program monitoring by the Superintendent in accordance with R277-733; and

(d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public school education with minimal disruption following discharge.

(3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.

(4) Custodial status alone does not qualify an individual for services under the IDEA.

(5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

(6) An educational service provider shall only disclose educational records of a student inmate, before or after release from custody, consistent with (FERPA).

(7) Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted herein.

R277-735-5. Fiscal Procedures.

(1) An inmate receiving educational services by or through a school district shall be a student of that school district for funding purposes.

(2) The Superintendent shall allocate state corrections education funds to school districts on the basis of annual applications.

(3) A program receiving funds approved for a corrections education project shall only expend funds for the purposes described in the respective funding application.

(4) Education Contracts funds used for corrections education shall be subject to Board accounting, auditing and budgeting rules and policies.

(5) Ten percent or $50,000, whichever is less, of state funds designated for corrections education not expended in the current fiscal year may be carried over and spent by a school district in the next fiscal year with written approval from the Superintendent.

(6) The Superintendent shall establish a timeline for submission and approval of school district budgets and carry over requests.

(7)(a) The Superintendent may consider excess funds in determining a school district's allocation for the next fiscal year.

(b) The Superintendent shall recapture fund balances in excess of 10 percent or $50,000 annually no later than February 1 and reallocate funds to school district corrections education programs through the supplemental award process based on need and effort consistent with R277-733.

R277-735-6. Allocation of Education Contracts Funds Designated for Corrections Education.

(1) The Superintendent may not allocate more than four percent of the total legislative education contracts funding appropriated for adult corrections education administrative services.

(2) The Superintendent shall use funds allocated in accordance with Subsection (1) for oversight, monitoring, and evaluation of corrections adult education program compliance with law and this rule.

(3) The Superintendent shall annually calculate:

(a) the total number of incarcerated offenders in the custody of the Utah Department of Corrections;

(b) the percentage of incarcerated offenders housed in county jails; and

(c) the percentage of incarcerated offenders housed at prison sites.

(4) The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

(5) An eligible school district shall receive a base amount of $10,000 for each correctional facility in which they provide services.

(6) The Superintendent shall prorate the balance of the education contracts funds allocation to school districts based upon adult education UTopia data reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

R277-735-7. Program, Curriculum, Outcomes and Student Mastery.

(1) Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.

(2)(a) An adult education student receiving education services in a state correctional facility education program may graduate with a school district adult education secondary diploma upon completion of the state required minimum units of credit under R277-700.

(b) A student in custody may meet graduation requirements through:

(i) completed credits; or

(ii) demonstrated course competency consistent with a student's plan for college and career readiness in accordance with R277-733.

(3) An adult student in custody seeking an adult high school diploma shall have the minimum credits defined in R277-705.

(4) A district shall employ a qualified Utah licensed educator to teach corrections education courses.

R277-735-8. Confidentiality.

(1) A transcript or diploma prepared for an inmate in custody shall:

(a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and

(b) not reference the inmate's custodial status.

(2)(a) A district or corrections education provider shall keep an inmate's education records which refer to custodial status,

~~inmate court records, and related matters separate from permanent school records.~~

~~(b) A district shall destroy or seal an inmate's education records upon order of a court of competent jurisdiction.~~

~~(3) A district or corrections education provider may only provide access to education records in accordance with FERPA.~~

~~R277-735-9. Adult Education Standards.~~

~~Corrections adult education programs shall meet program standards defined in R277-733 and the Utah Adult Education Policies and Procedures Guide.~~

~~KEY: public education, custody, inmates~~
~~Date of Enactment or Last Substantive Amendment: August 7, 2017~~
~~Notice of Continuation: June 6, 2017~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-2-401; 53E-3-401(4)~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R313-16-293**	**Filing No. 52562**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Application for Registration of Inspection Services

3. Purpose of the new rule or reason for the change:

It has come to the attention of the Division of Waste Management and Radiation Control that the wording of Subsection R313-16-293(2)(h) is causing some confusion among the qualified experts and x-ray machine registrants on who are supposed to submit inspection reports to the Division. This confusion is causing the Division significant problems and delays in meeting its regulatory obligations. The proposed amendment to the rule will make it clear that the qualified experts are required to submit reports of the inspection they conduct to the Director.

4. Summary of the new rule or change:

Subsection R313-16-293(2)(h) currently states that qualified experts must attest that they or the registrant will submit a written report to the Director within 30 days of the completion of an inspection. The proposed amendment would change the rule by removing the option to have the registrant submit the report and require the qualified experts to attest that they will submit a written report to the director within 30 days of the completion of an inspection.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that this rule amendment will have any measurable cost or savings to the state budget. Employees of the Division of Waste Management and Radiation Control who work in the x-ray program review all submitted reports regardless of whether they are submitted by the registrant or by a qualified expert. These employees will continue to review the reports that are submitted.

B) Local governments:

It is not anticipated that this rule amendment will have any measurable cost or savings for local governments. Any local government entity with a registered x-ray machine must still have the machine inspected and must pay the appropriate inspection fee. This amendment simply places the requirement for submission of the inspection report solely on the inspector instead of sharing that requirement with the registrant as currently exists in the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that this rule amendment will have any measurable cost or savings for small businesses. Any small business with a registered x-ray machine must still have the machine inspected and must pay the appropriate inspection fee. This amendment simply places the requirement for submission of the inspection report solely on the inspector instead of sharing that requirement with the registrant as currently exists in the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that this rule amendment will have any measurable cost or savings for non-small businesses. Any non-small business with a registered x-ray machine must still have the machine inspected and must pay the appropriate inspection fee. This amendment simply places the requirement for submission of the inspection report solely on the inspector instead of sharing that requirement with the registrant as currently exists in the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that this rule amendment will have any measurable cost or savings for persons other than small businesses, non-small businesses, state, or local government entities. Any such person with a registered x-ray machine must still have the machine inspected and must pay the appropriate inspection fee. This amendment simply places the requirement for submission of the inspection report solely on the inspector instead of sharing that requirement with the registrant as currently exists in the rule.

F) Compliance costs for affected persons:

It is not anticipated that there will be any measurable compliance costs for affected persons due to the adoption of this rule amendment. Qualified experts already submit the majority of the reports for the inspections they conduct. Amending the requirement so that qualified experts must submit the reports for all the inspections they conduct is not anticipated to increase their costs.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Amending this rule should not have any fiscal impact on any business. This amendment will remove confusion among qualified experts and registrants about who must submit the inspection reports to the state but will not change any fees or costs associated with inspections. Businesses with x-ray equipment will still be required to be inspected at the appropriate frequency and pay the appropriate fee for that inspection.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-3-104	Section 19-6-104	Section 19-6-107

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.
R313-16-293. Application for Registration of Inspection Services.

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Director shall complete an application for registration on a form prescribed by the Director and shall submit all information required by the Director as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Director an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Director on a form prescribed by the Director; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Director; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Director documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they[~~ or the registrant~~] will submit to the Director, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance; and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Director; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Director pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

KEY: x-rays, inspections
Date of Enactment or Last Substantive Amendment: [~~September 14, 2007~~]2020
Notice of Continuation: July 1, 2016
Authorizing, and Implemented or Interpreted Law: 19-3-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-15-14**	**Filing No. 52563**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**

Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

DIYer Reimbursement

3. Purpose of the new rule or reason for the change:

With this amendment, the Division is clarifying the type of documents that DIYer collection centers must submit in order to qualify for the reimbursement.

4. Summary of the new rule or change:

Subsection R315-15-14.2(a) currently requires DIYer collection centers to submit a copy of all records of used oil collected during the collection period for which they are seeking reimbursement. Many of the copies being received by the Division are poor quality, or are photographs taken with a mobile device, that are difficult to read. The poor quality and readability of the copies is making it difficult for the Division to process reimbursements in a timely manner. Additionally, photographs of documents cannot be used as legal documentation for audit purposes. In order to solve these problems, the rule is being changed to require the submission of either original documents or legible copies. The amendment also clarifies that photographs of documents are not acceptable.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that this amendment will result in any direct, measurable cost or savings to any agency of state government. Any state government entity seeking reimbursement for collected used oil is currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

B) Local governments:

It is not anticipated that this amendment will result in any direct, measurable cost or savings to any local governments. Any local government entity seeking reimbursement for collected used oil is currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that this amendment will result in any direct, measurable cost or savings to any small businesses. Businesses seeking reimbursement for collected used oil are currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that this amendment will result in any direct, measurable cost or savings to any non-small businesses. Businesses seeking reimbursement for collected used oil are currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that this amendment will result in any direct, measurable cost or savings to any persons other than small businesses, non-small businesses, or state or local governments. Any person seeking reimbursement for collected used oil is currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

F) Compliance costs for affected persons:

It is not anticipated that compliance with these amended rules will result in any increased cost of compliance for any of the regulated entities.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			

State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Amending this rule should not have any measurable fiscal impact on any businesses. As previously stated, businesses seeking reimbursement for collected used oil are currently required to submit documents. This amendment simply clarifies the type of documents that can be submitted.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-704	Section 19-6-717	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-15. Standards for the Management of Used Oil.
R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Director shall pay a semi-annual recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor[~~/~~], re-refiner, burner, or registered marketer or burned in accordance with Subsection R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.25 per gallon, subject to availability of funds and the priorities [~~of Utah Code Annotated~~]in accordance with Section19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit an original document or a legible copy, photographs of documents are not acceptable, of [~~all~~]any records of DIYer and farmer, [~~as defined in~~]meeting the requirements of Subsection R315-15-2.1(a)(4), used oil collected during the semi-annual collection periods of January through June and July through December for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the semi-annual collection period.

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than 60 days after the end of the semi-annual collection period for which reimbursement is requested will be paid during the next reimbursement period.

(d) Any reimbursement requests outside the timeframe [~~outlined~~]in accordance with Subsection R315-15-14.2(a) will not be granted unless approved by the Director.

KEY: grants, registration, recycling, used oil
Date of Enactment or Last Substantive Amendment: [~~April 15, 2019~~]2020
Notice of Continuation: March 10, 2016
Authorizing, and Implemented or Interpreted Law: 19-6-704; 19-6-720

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-260**	**Filing No. 52564**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Waste Management	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Hazardous Waste Management System

3. Purpose of the new rule or reason for the change:

In September 2012, the US Congress passed legislative bill number S. 710 directing the Environmental Protection Agency (EPA) to establish an e-Manifest system. President Obama signed the e-Manifest Act into law on October 5, 2013 (Pub. L. No. 112-195). The Act authorizes the EPA to collect user fees to recover the costs associated with developing and running e-Manifest. The EPA implemented the law with two rulemaking actions.

The first rulemaking was published in the Federal Register on February 7, 2014 (79 FR 7518) and has already been adopted into Title R315 of the Utah Administrative Code. This rule revised the regulatory requirements for the Resource Conservation and Recovery Act (RCRA) hazardous waste manifest system to allow the use of electronic manifests in addition to the existing paper manifests.

The second rulemaking was published in the Federal Register on January 3, 2018 (83 FR 420). This rule contains a schedule of user fees to cover the EPA's cost of building and running the e-Manifest system and e-Manifest program. It announced the date when the system became active and the EPA began to accept electronic manifests. The rule addresses which users of manifests will be charge fees and when those fees will be charged. The rule also contains the fee formula.

Many of the requirements in this rule can only be administered and enforced by the EPA. Those that are not solely administered and enforced by the EPA were promulgated under the authority of Section 2(g)(3) of the e-Manifest Act. This authority is similar to that in Section 3006(g) of the RCRA which provides that the EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of the EPA. The is a fully authorized state. However; because the hazardous waste manifest is an area subject to special program consistency considerations and Section 2(g)(3) of the e-Manifest Act requires that all federal requirements promulgated under e-Manifest Act authority be given consistent effect in all states, authorized State programs are still required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The purpose of this change is to adopt the appropriate revisions into Rule R315-260.

4. Summary of the new rule or change:

Section R315-260-4 is renumbered as R315-260-3 and Section R315-260-5 is renumbered as R315-260-6 to allow for two new sections being adopted from federal regulations.

Section R315-260-4, Manifest Copy Submission Requirements for Certain Interstate Waste Shipments, is added.

Section R315-260-5, Applicability of Electronic Manifest System and User Fee Requirements to Facilities Receiving State-Only Regulated Waste Shipments, is added.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore, realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because the does not operate any hazardous waste treatment, storage, or disposal facilities (TSDFs) it will not be charged any user fees associated with the e-Manifest

system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore any agency that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore impossible to determine if there will be any cost increase to the state budget due to these revisions. It is anticipated that any state agency that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests. Implementation of these rule changes by the Division of Waste Management and Radiation Control will not result in an increase or decrease to the state budget because the revisions do not increase or decrease the workload of the Division needed to enforce the rules.

B) Local governments:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because there are no local governments operating any hazardous waste treatment, storage, or disposal facilities (TSDFs) they will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore any local government that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore impossible to determine if there will be any cost increase to local government budgets due to these revisions. It is anticipated that any local government that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Currently, there approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are small businesses but due to the number of businesses it is not practical to determine which are small businesses. The list of North American Industry Classification System (NAICS) codes associated with businesses that may be affected by this amendment includes 85 codes. As stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any small business that ships hazardous waste should already be following the rules. Any costs or savings to small businesses are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any small businesses that are in addition to those created by following the EPA's rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are non-small businesses but due to the number of businesses it is not practical to determine which are non-small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. For a complete listing of NAICS codes used in this analysis, please contact the agency. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system and are required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The revisions to the federal rules became effective nationally on June 30, 2018.

At the time that these rules became effective, 3,830 businesses were required to comply with the rules as amended. In the document entitled Regulatory Impact Analysis EPA's 2017 Final Rule Establishing User Fees for the RCRA Electronic Hazardous Waste System (e-Manifest) dated December 2017, the EPA estimates the regulatory impact of the rule revisions. The document concludes that there are fiscal impacts to businesses involved in the treatment, storage, and disposal of hazardous waste because the EPA is required to recoup the cost of developing and maintaining the e-Manifest system and has chosen to charge a per manifest fee to those facilities that receive hazardous waste. These costs may be passed along to businesses that generate hazardous waste by the receiving businesses but, without knowledge of private contracts between these business entities it is not possible to determine if this is actually happening. The document also concludes that there will be a cost savings to businesses involved the generation, transport, and receiving of hazardous waste due to time and material savings relative to the activities that were being performed with paper manifests that will now be done electronically. The is adopting these rule revisions in order to maintain equivalency with the Federal program. It is not anticipated that adoption of

these rule revisions will result in any additional fiscal regulatory impact beyond those created by compliance with the regulations adopted by the EPA.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently, there are no persons other than small businesses, businesses, or local governments that have submitted a notification that they are a generator, transporter, or receiver of hazardous waste and households are exempt from having to comply with the hazardous waste regulations thus exempting individual persons from having to comply with hazardous waste shipping requirements.

Additionally, as stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any persons other than small businesses, businesses, or local governments that may be shipping hazardous waste should already be following the rules. Any costs to persons other than small businesses, businesses, or local governments are a result of following the EPA's the rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any such persons that are in addition to those created by following the EPA's rules.

F) Compliance costs for affected persons:

It is anticipated that there will not be any additional compliance costs for affected persons due to the adoption of these rule changes because the is simply adopting these rules as required by the EPA to maintain the equivalency of our program to that of the EPA. The rule changes being adopted are administered at the federal government level by the EPA.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Because these rule changes are being administered by the EPA and are already in effect nationally, it is not anticipated that their adoption by the will have any fiscal impact beyond the impact created by the federal adoption of the rule changes.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-104	Section 19-6-105	Section 19-6-106

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-260. Hazardous Waste Management System.
R315-260-[4]3. References to Other Statutes and Regulations.

(a) Federal statutes and regulations that are cited in Rules R315-260 through 266, 268, 270, 273 and 124 that are not specifically adopted by reference shall be used as guidance in interpreting the Rules R315-260 through 266, 268, 270, 273 and 124.

(b) Any reference to the "Department of Transportation" or "DOT" in Rules R315-260 through 266, 268, 270, 273 and 124 shall mean the "U.S. Department of Transportation".

R315-260-4. Manifest Copy Submission Requirements for Certain Interstate Waste Shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR 264.1300 through 264.1316, which are adopted and incorporated by reference.

R315-260-5. Applicability of Electronic Manifest System and User Fee Requirements to Facilities Receiving State-Only Regulated Waste Shipments.

(a) For purposes of Section R315-260-5, "state-only regulated waste" means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program; or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of Section R315-264-71, use of the manifest, and Section R315-264-72, manifest discrepancies; and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR 264.1300 through 264.1316, which are adopted and incorporated by reference.

R315-260-[5]6. Inspections.

Any duly authorized officer, employee or representative of the Department or the Director may, in accordance with Section 19-6-109, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated or disposed of for the purpose of ascertaining the compliance with Rules R315-15, R315-101, R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Inspectors may also have access to and the right to make copies of any records, either in hard copy or electronic format, relating to compliance with Rules R315-15, R315-101, R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also take photographs and make video and audio recordings while conducting authorized activities.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~October 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-262**	**Filing No. 52565**

Agency Information

1. Department:	Environmental Quality
Agency:	Waste Management and Radiation Control, Waste Management
Building:	MASOB
Street address:	195 N. 1950 W.
City, state:	Salt Lake City, Utah

Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Hazardous Waste Generator Requirements

3. Purpose of the new rule or reason for the change:

In September 2012, the US Congress passed legislative bill number S. 710 directing the Environmental Protection Agency (EPA) to establish an e-Manifest system. President Obama signed the e-Manifest Act into law on October 5, 2013 (Pub. L. No. 112-195). The Act authorizes The EPA to collect user fees to recover the costs associated with developing and running e-Manifest. The EPA implemented the law with two rule making actions.

The first rulemaking was published in the Federal Register on February 7, 2014 (79 FR 7518) and has already been adopted into Title R315 of the Utah Administrative Code. This rule revised the regulatory requirements for the Resource Conservation and Recovery Act (RCRA) hazardous waste manifest system to allow the use of electronic manifests in addition to the existing paper manifests.

The second rulemaking was published in the Federal Register on January 3, 2018 (83 FR 420). This rule contains a schedule of user fees to cover the EPA's cost of building and running the e-Manifest system and e-Manifest program. It announced the date when the system became active and the EPA began to accept electronic manifests. The rule addresses which users of manifests will be charge fees and when those fees will be charged. The rule also contains the fee formula.

Many of the requirements in this rule can only be administered and enforced by the EPA. Those that are not solely administered and enforced by the EPA were promulgated under the authority of Section 2(g)(3) of the e-Manifest Act. This authority is similar to that in Section 3006(g) of RCRA which provides that the EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. The is a fully authorized state. However; because the hazardous waste manifest is an area subject to special program consistency considerations and section 2(g)(3) of the e-Manifest Act requires that all federal requirements promulgated under e-Manifest Act authority be given consistent effect in all states, authorized state programs are still required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The purpose of this change is to adopt the appropriate revisions into Rule R315-262.

4. Summary of the new rule or change:

Reference to instructions contained in an appendix for filling out manifests is removed from Subsections R315-262-20(a)(1) and R315-262-24(e) because the appendix has been removed from the rules.

Changes were made throughout various subsections of Sections R315-262-21 and R315-262-24 based on the new paper manifest form placed into use by the EPA and the new e-Manifest system.

Subsection R315-262-24(g) is deleted because e-Manifest user fee rules have been moved to Rules R315-264 and R315-265. Subsection R315-262-24(h) was added to allow users to make data corrections to manifests after they have been submitted to the e-Manifest system. (EDITOR'S NOTE: The proposed amendment to Rule R315-264 is under ID No. 52567 and the proposed amendment to Rule R315-265 is under ID No. 52568 in this issue, March 1, 2020, in the Bulletin.)

Due to a renumbering that occurred in Rule R315-260 the reference to Section R315-260-5 in Subsection R315-262-40(e) was changed to Section R315-260-6.

Section R315-262-217 was deleted. This section contained the instructions for use of the uniform hazardous waste manifest. These instructions are now printed on the actual manifest document.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because the does not operate any hazardous waste treatment, storage, or disposal facilities (TSDFs) it will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-

Manifest user fees that they are assessed by the EPA onto their customers and therefore, any agency that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore impossible to determine if there will be any cost increase to the state budget due to these revisions. It is anticipated that any state agency that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests. Implementation of these rule changes by the Division of Waste Management and Radiation Control will not result in an increase or decrease to the state budget because the revisions do not increase or decrease the workload of the Division needed to enforce the rule.

B) Local governments:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rule.

Because there are no local governments operating any hazardous waste treatment, storage or disposal facilities (TSDFs) they will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore any local government that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore impossible to determine if there will be any cost increase to local government budgets due to these revisions. It is anticipated that any local government that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Currently there approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are small businesses but due to the number of businesses it is not practical to determine which are small businesses. The list of North American Industry Classification System (NAICS) codes associated with businesses that may be affected by this amendment includes 85 codes. As stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any small business that ships hazardous waste should already be following the rule.

Any costs or savings to small businesses are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any small businesses that are in addition to those created by following the EPA's rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are non-small businesses but due to the number of businesses it is not practical to determine which are non-small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. For a complete listing of NAICS codes used in this analysis, please contact the agency. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system and are required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The revisions to the federal rules became effective nationally on June 30, 2018. At the time that these rules became effective 3,830 businesses were required to comply with the rules as amended. In the document entitled Regulatory Impact Analysis EPA's 2017 Final Rule Establishing User Fees for the RCRA Electronic Hazardous Waste System (e-Manifest) dated December 2017 the EPA estimates the regulatory impact of the rule revisions. The document concludes that there are fiscal impacts to businesses involved in the treatment, storage, and disposal of hazardous waste because the EPA is required to recoup the cost of developing and maintaining the e-Manifest system and has chosen to charge a per manifest fee to those facilities that receive hazardous waste. These costs may be passed along to businesses that generate hazardous waste by the receiving businesses but, without knowledge of private contracts between these business entities it is not possible to determine if this is actually happening.

The document also concludes that there will be a cost savings to businesses involved the generation, transport, and receiving of hazardous waste due to time and material savings relative to the activities that were being performed with paper manifests that will now be done electronically. The is adopting these rule revisions in order to maintain equivalency with the Federal program. It is not anticipated that adoption of these rule revisions

will result in any additional fiscal regulatory impact beyond those created by compliance with the regulations adopted by the EPA.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently, there are no persons other than small businesses, businesses, or local governments that have submitted a notification that they are a generator, transporter, or receiver of hazardous waste and households are exempt from having to comply with the hazardous waste regulations thus exempting individual persons from having to comply with hazardous waste shipping requirements.

Additionally, as stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any persons other than small businesses, businesses, or local governments that may be shipping hazardous waste should already be following the rule. Any costs to persons other than small businesses, businesses, or local governments are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any such persons that are in addition to those created by following the EPA's rules.

F) Compliance costs for affected persons:

It is anticipated that there will not be any additional compliance costs for affected persons due to the adoption of these rule changes because the is simply adopting these rules as required by the EPA to maintain the equivalency of our program to that of the EPA. The rule changes being adopted are administered at the federal government level by the EPA.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Because these rule changes are being administered by the EPA and are already in effect nationally it is not anticipated that their adoption by the will have any fiscal impact beyond the impact created by the federal adoption of the rule changes.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-104	Section 19-6-105	Section 19-6-106

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-262. Hazardous Waste Generator Requirements.
R315-262-20. Manifest Requirements Applicable to Small and Large Quantity Generators -- General Requirements.

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A[~~, according to the instructions included in the appendix to Rule R315-262~~].

(2) Reserved.

(3) Electronic manifest. In lieu of using the manifest form specified in Subsection R315-262-20(a)(1), a person required to prepare a manifest under Subsection R315-262-20(a)(1) may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in Section R315-262-24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) The requirements of Section R315-262-20 through 27 do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of Sections R315-262-20 through 27 and Subsection R315-262-32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding Subsection R315-263-10(a), the generator or transporter shall comply with the requirements for transporters set forth in Sections R315-263-30 and 31 in the event of a discharge of hazardous waste on a public or private right-of-way.

R315-262-21. Manifest Requirements Applicable to Small and Large Quantity Generators -- Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests.

(a)(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under Subsection R315-262-21(c) and (e).

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of Section R315-262-21. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant shall submit an initial application to the EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house, i.e., using its own printing establishments, or through a separate, i.e., unaffiliated, printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application shall identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries, e.g., prime and subcontractor relationships, the role of each shall be discussed. The application shall provide the name and mailing address of each company. It also shall provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of Section R315-262-21. The application shall discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application shall describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application shall describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application shall also indicate how the printer will pre-print a unique number on each form, e.g., crash or press numbering. The application also shall explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public, e.g., for purchase.

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so, e.g., corporate brochures, product samples, customer references, documentation of ISO certification, so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant shall use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of Section R315-262-21 and that it will notify the EPA Director of the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA shall review the application submitted under Subsection R315-262-21(b) and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under Subsection R315-262-21(c), EPA shall provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in Subsection R315-262-21(d)(3). The registrant's samples shall meet all of the specifications in Subsection R315-262-21(f) and be printed by the company that will print the manifest as identified in the application approved under Subsection R315-262-21(c).

(2) The registrant shall submit a description of the manifest samples as follows:

(i) Paper type, i.e., manufacturer and grade of the manifest paper;

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant shall indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA shall evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant shall print the manifest and continuation sheet according to its application approved under Subsection R315-262-21(c) and the manifest specifications in Subsection R315-262-21(f). It also shall print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets shall be printed according to the following specifications:

(1) The manifest and continuation sheet shall be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA shall be pre-printed in Item 4 of the manifest. The tracking number shall consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet shall be printed on 81/2 x 11-inch white paper, excluding common stubs, e.g., top- or side-bound stubs. The paper shall be durable enough to withstand normal use.

(4) The manifest and continuation sheet shall be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution shall be printed with a distinct ink color or with another method; e.g., white text against black background in text box, or, black text against grey background in text box; that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

(5) The manifest and continuation sheet shall be printed as [~~six~~]five-copy forms. Copy-to-copy registration shall be exact within 1/32[-]nd of an inch. Handwritten and typed impressions on the form shall be legible on all [~~six~~]five copies. Copies shall be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet shall indicate how the copy shall be distributed, as follows:

(i) Page 1, top copy: "Designated facility to [~~destination State, if required~~]EPA's e-Manifest system"[~~.~~];

(ii) Page 2: "Designated facility to generator[~~, State, if required~~]"[~~.~~];

(iii) Page 3: "Designated facility copy[~~to generator~~]"[~~.~~];

(iv) Page 4: "[~~Designated facility's~~]Transporter copy"[~~,~~]; and

(v) Page 5, bottom copy: "[~~Transporter's~~]Generator's initial copy".

[~~(vi) Page 6 (bottom copy): "Generator's initial copy".~~]

(7) The instructions for the manifest form, EPA Form 8700-22, and the manifest continuation sheet, EPA Form 8700-22A, shall be printed in accordance with the content that is currently approved under OMB Control Number 2050-0039 and published to the e-Manifest program's web site. The instructions [~~in the appendix to Rule R315-262~~]shall appear legibly on the back of the copies of the manifest and continuation sheet as provided in Subsection R315-262-21(f). The instructions shall not be visible through the front of the copies when photocopied or faxed.

(i) Manifest [~~EPA~~]Form 8700-22.

(A) The "Instructions for Generators" on Copy [~~6~~]5;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy [~~5~~]4; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy [4]3.

(ii) Manifest [~~EPA~~]Form 8700-22A.

(A) The "Instructions for Generators" on Copy [~~6~~]5;

(B) The "Instructions for Transporters" on Copy [~~5~~]4; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy [4]3.

(8) The designated facility copy of each manifest and continuation sheet shall include in the bottom margin the following warning in prominent font: "If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side."

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under Subsections R315-262-21(c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator shall determine whether the generator state or the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under these states' authorized programs. Generators also shall determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator shall supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under Subsection R315-262-21(c), e.g., to update a company phone number or name of contact person, the registrant shall revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either shall approve or deny the revision. If the Agency denies the revision, it shall explain the reasons for the denial, and it shall contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant shall submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency shall either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under Subsection R315-262-21(e), then the registrant shall submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant shall submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA shall evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under Subsection R315-262-21(e), a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it shall submit three samples of the manifest or continuation sheet to the registry for approval. EPA shall evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under Subsection R315-262-21(d) or (h)(3) if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision; e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant. A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant shall notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under Subsection R315-262-21(e), EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA shall contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA shall send a warning letter to the registrant that specifies the date by which it shall come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA shall send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant shall provide information on its printing activities to EPA if requested.

R315-262-24. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Electronic Manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-262-24 in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-

Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-262-24 if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may [~~prepare~~]use an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest[~~system.~~].

(1) Except that a generator may sign by hand and retain a paper copy of the electronic manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest shall also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator shall obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions[~~in the appendix to Rule R315-262~~], and use these paper forms from this point forward in accordance with the requirements of Section R315-262-23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under Subsection R315-262-24(d).

(g) Reserved.[~~Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time to time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to Rule R315-262~~].

(h) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person, such as the waste handler, named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in Subsection R315-264-71(l), which applies to corrections made to either paper or electronic manifest records.

R315-262-40. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping.

(a) A generator shall keep a copy of each manifest signed in accordance with Subsection R315-262-23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall follow Subsection R315-262-11(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods or retention referred to in Section R315-262-40 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(e) Records maintained in accordance with Section R315-262-40 and any other records which the Director deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-262-11 shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Director as provided in R315-260-[~~5~~]6 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

[~~R315-262-217. Appendix to Rule R315-262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions).~~

~~U.S. EPA Forms 8700-22 and Manifest Continuation Sheet (EPA Form 8700-22A) found in appendix to 40 CFR 262, 2015 edition, are incorporated and incorporated by reference.~~

~~Read all instructions before completing this form.~~

~~1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.~~

~~2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.~~

~~Manifest 8700-22~~

~~The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:~~

~~Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest shall be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T),~~

1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

I. Instructions for Generators

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of _

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number shall:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number shall be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I

Types of Containers

BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II

Units of Measure

G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes shall be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator shall read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter shall check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer shall check the import box and enter the point of entry (city and state) into the United States.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by Subsections R315-264-72(b) and R315-265-72(b)), between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

2. For rejected loads and residues (Subsections R315-264-72(d), (e), and (f), or R315-265-72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the

inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste shall submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Subsections R315-264-72(e) and R315-265-72(e)).

4. Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) shall sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues shall be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used -- press down hard.

This form shall be used as a continuation sheet to U.S. EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page _ --

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name --

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter -- Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter -- Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

~~Item 33. Transporter - Acknowledgment of Receipt of Materials~~

~~Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~

~~Item 34. Transporter - Acknowledgment of Receipt of Materials~~

~~Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~

~~Owner and Operators of Treatment, Storage, or Disposal Facilities~~

~~Item 35. Discrepancy Indication Space~~

~~Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.~~

~~Item 36. Hazardous Waste Report Management Method Codes~~

~~For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.~~]

KEY: hazardous waste, generators
Date of Enactment or Last Substantive Amendment: [~~October 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-263**	**Filing No. 52566**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Waste Management	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers

3. Purpose of the new rule or reason for the change:

In September 2012, the US Congress passed legislative bill number S. 710 directing the Environmental Protection Agency (EPA) to establish an e-Manifest system. President Obama signed the e-Manifest Act into law on October 5, 2013 (Pub. L. No. 112-195). The Act authorizes the EPA to collect user fees to recover the costs associated with developing and running e-Manifest. The EPA implemented the law with two rulemaking actions.

The first rulemaking was published in the Federal Register on February 7, 2014 (79 FR 7518) and has already been adopted into Title R315 of the Utah Administrative Code. This rule revised the regulatory requirements for the Resource Conservation and Recovery Act (RCRA) hazardous waste manifest system to allow the use of electronic manifests in addition to the existing paper manifests.

The second rulemaking was published in the Federal Register on January 3, 2018 (83 FR 420). This rule contains a schedule of user fees to cover the EPA's cost of building and running the e-Manifest system and e-Manifest program. It announced the date when the system became active and the EPA began to accept electronic manifests. The rule addresses which users of manifests will be charge fees and when those fees will be charged. The rule also contains the fee formula.

Many of the requirements in this rule can only be administered and enforced by EPA. Those that are not solely administered and enforced by the EPA were promulgated under the authority of Section 2(g)(3) of the e-Manifest Act. This authority is similar to that in Section 3006(g) of RCRA which provides that the EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of the EPA. The is a fully authorized state. However; because the hazardous waste manifest is an area subject to special program consistency considerations and Section 2(g)(3) of the e-Manifest Act requires that all federal requirements promulgated under e-Manifest Act authority be given consistent effect in all states, authorized state programs are still required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the

Federal program. The purpose of this change is to adopt the appropriate revisions into Rule R315-263.

4. Summary of the new rule or change:

Subsection R315-263-20(a)(8) is deleted because e-Manifest user fee rules have been moved to Rules R315-264 and R315-265. (EDITOR'S NOTE: The proposed amendment to Rule R315-264 is under ID No. 52567 and the proposed amendment to Rule R315-265 is under ID No. 52568 in this issue, March 1, 2020, in the Bulletin.)

Subsection R315-263-20(a)(9) was added to allow users to make data corrections to manifests after they have been submitted to the e-Manifest system.

Various subsections of Section R315-262-21 are amended or added as required by the e-Manifest rule. Additionally, references to sections of 40 CFR 265 that have now been adopted into Rule R315-265 were amended to reflect this change.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore, realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rule.

Because the does not operate any hazardous waste treatment, storage or disposal facilities (TSDFs) it will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore, any agency that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore impossible to determine if there will be any cost increase to the state budget due to these revisions. It is anticipated that any state agency that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests. Implementation of these rule changes by the Division of Waste Management and Radiation Control will not result in an increase or decrease to the state budget because the revisions do not increase or decrease the workload of the Division needed to enforce the rules.

B) Local governments:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore, realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rule.

Because there are no local governments operating any hazardous waste treatment, storage, or disposal facilities (TSDFs) they will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore any local government that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore, impossible to determine if there will be any cost increase to local government budgets due to these revisions. It is anticipated that any local government that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Currently there approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are small businesses but due to the number of businesses it is not practical to determine which are small businesses. The list of North American Industry Classification System (NAICS) codes associated with businesses that may be affected by this amendment includes 85 codes. As stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any small business that ships hazardous waste should already be following the rules. Any costs or savings to small businesses are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any small businesses that are in addition to those created by following the EPA's rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are non-small businesses but due to the number of businesses it is not practical to determine which are non-small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. For a complete listing of NAICS codes used in this analysis, please contact the agency. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system and are required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The revisions to the federal rules became effective nationally on June 30, 2018. At the time that these rules became effective, 3,830 businesses were required to comply with the rules as amended. In the document entitled Regulatory Impact Analysis EPA's 2017 Final Rule Establishing User Fees for the RCRA Electronic Hazardous Waste System (e-Manifest) dated December 2017, the EPA estimates the regulatory impact of the rule revisions. The document concludes that there are fiscal impacts to businesses involved in the treatment, storage, and disposal of hazardous waste because the EPA is required to recoup the cost of developing and maintaining the e-Manifest system and has chosen to charge a per manifest fee to those facilities that receive hazardous waste. These costs may be passed along to businesses that generate hazardous waste by the receiving businesses but, without knowledge of private contracts between these business entities, it is not possible to determine if this is actually happening. The document also concludes that there will be a cost savings to businesses involved the generation, transport, and receiving of hazardous waste due to time and material savings relative to the activities that were being performed with paper manifests that will now be done electronically. The is adopting these rule revisions in order to maintain equivalency with the Federal program. It is not anticipated that adoption of these rule revisions will result in any additional fiscal regulatory impact beyond those created by compliance with the regulations adopted by the EPA.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently there are no persons other than small businesses, businesses, or local governments that have submitted a notification that they are a generator, transporter, or receiver of hazardous waste and households are exempt from having to comply with the hazardous waste regulations thus exempting individual persons from having to comply with hazardous waste shipping requirements. Additionally, as stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any persons other than small businesses, businesses, or local governments that may be shipping hazardous waste should already be following the rules. Any costs to persons other than small businesses, businesses, or local governments are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any such persons that are in addition to those created by following the EPA's rules.

F) Compliance costs for affected persons:

It is anticipated that there will not be any additional compliance costs for affected persons due to the adoption of these rule changes because the is simply adopting these rules as required by the EPA to maintain the equivalency of our program to that of the EPA. The rule changes being adopted are administered at the federal government level by the EPA.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Because these rule changes are being administered by the EPA and are already in effect nationally, it is not anticipated that their adoption by the will have any fiscal impact beyond the impact created by the federal adoption of the rule changes.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-104	Section 19-6-105	Section 19-6-106

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-263. Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers.
R315-263-20. The Manifest System.

(a)(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest form; EPA Form 8700-22, and if necessary, EPA Form 8700-22A; signed in accordance with the requirement of Section R315-262-23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and signed with a valid and enforceable electronic signature as described in Section R315-262-25.

(2) Exports. For exports of hazardous waste subject to the requirements of Sections R315-262-80 through 262-84, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with Section R315-263-20, as appropriate, and for exports occurring under the terms of consent issued by EPA on or after December 31, 2016, a movement document that includes all information require by Subsection R315-262-83(d).

(3) Compliance date for form revisions. The revised Manifest form and procedures in Sections R315-260-10, 261-7, 263-20, and 263-21, had an effective date of September 5, 2006.

(4) Use of electronic manifest-legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-263-20 in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter shall carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an

electronic manifest in the transporter's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under Section R315-263-20 if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to Subsection R315-263-20(a)(4)(iii)(A), or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space, Item 14, that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include, if not pre-printed on the replacement manifest, the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste shall ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with Subsection R315-263-20(a)(4)(iii)(A). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) [~~Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time to time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR part 262~~]Reserved.

(9) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person, such as the waste handler, named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in Subsection R315-264-71(l), which applies to corrections made to either paper or electronic manifest records.

(b) Before transporting the hazardous waste, the transporter shall sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by Subsection R315-262-83(d) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by Subsection R315-262-84(d) also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with Section R315-263-22; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of Subsections R315-263-20(c), (d) and (f) do not apply to water, bulk shipment, transporters if:

(1) The hazardous waste is delivered by water, bulk shipment, to the designated facility; and

(2) A shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator certification, and signatures; and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by Subsections R315-262-83(d) or 262-84(d) accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water, bulk shipment, transporter obtains the date of delivery and signature of the water, bulk shipment, transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water, bulk shipment, transporter in accordance with Section R315-263-22.

(f) For shipments involving rail transportation, the requirements of Subsections R315-263-20(c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with Section R315-263-22.

(2) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator certification, and signatures; and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by Subsections R315-262-83(d) or 262-84(d) accompanies the hazardous waste at all times.

Note to Subsection R315-263-20(f)(2): Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper, if the manifest has not been received by the facility; and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with Section R315-263-22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with Section R315-263-22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States shall:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with Subsection R315-263-22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) For paper manifest only,

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in Subsection R315-264-71(a)(2)(v); and

(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of Section 315-263-20 or those of Section R315-263-22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in Subsection R315-262-20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

R315-263-21. Compliance with the Manifest.

(a) Except as provided in Subsection R315-263-21(b), [~~The~~]the transporter shall deliver the entire quantity of hazardous waste which [~~he~~]the transporter has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) Emergency Condition. If the hazardous waste cannot be delivered in accordance with Subsection R315-263-21(a)(1), (2) or (4) because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter shall contact the generator for further [~~directions~~]instructions and shall revise the manifest according to the generator's instructions.

(2) Transporters without agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with Subsection R315-263-21(a)(3), and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with Subsection R315-263-21(a)(3) because of an emergency condition; or

(ii) The current transporter proposes to change the transporters designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) Transporters with agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with Subsection R315-263-21(a)(3), and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;" and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under Subsection R315-263-21(b)(3) does not affect the generator's liability or responsibility for complying with any applicable requirement under Rules R315-260 through R315-266, R315-268, R315-270 and R315-273, or grant any additional authority to the transporter to act on behalf of the generator.

[~~(2)~~](c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter shall obtain the following:

[~~(i)~~](1) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that shall accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter shall retain a copy of this manifest in accordance with Section R315-263-22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter shall obtain a new manifest to accompany the shipment, and the new manifest shall include all of the information required in Subsections R315-264-72(e)(1) through (6) or (f)(1) through (6) or [~~40 CFR~~]Subsections R315-265[~~.~~]-72(e)(1) through (6) or (f)(1) through (6)[~~, which are adopted by reference~~].

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment shall be delivered. The transporter shall retain a copy of the manifest in accordance with Section R315-263-22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter shall obtain a new manifest for the shipment and comply with Subsection R315-264-72(e)(1) through (6) or [~~40 CFR~~]R315-265[~~.~~]-72(e)(1) through (6)[~~, which are adopted by reference~~].

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~October 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-264**	**Filing No. 52567**

Agency Information

1. Department:	Environmental Quality
Agency:	Waste Management and Radiation Control, Waste Management
Building:	MASOB
Street address:	195 N. 1950 W.
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 144880
City, state, zip:	Salt Lake City, Utah 84114-4880

Contact person(s):

Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

3. Purpose of the new rule or reason for the change:

In September 2012, the US Congress passed legislative bill number S. 710 directing EPA to establish an e-Manifest system. President Obama signed the e-Manifest Act into law on October 5, 2013 (Public law P. L. 112-195). The Act authorizes the United States Environmental Protection Agency (EPA) to collect user fees to recover the costs associated with developing and running e-Manifest. The EPA implemented the law with two rule making actions.

The first rulemaking was published in the Federal Register on February 7, 2014 (79 FR 7518) and has already been adopted into Title R315 of the Utah Administrative Code. This rule revised the regulatory requirements for the RCRA hazardous waste manifest system to allow the use of electronic manifests in addition to the existing paper manifests.

The second rulemaking was published in the Federal Register on January 3, 2018 (83 FR 420). This rule contains a schedule of user fees to cover the EPA's cost of building and running the e-Manifest system and e-Manifest program. It announced the date when the system became active and the EPA began to accept electronic manifests. The rule addresses which users of manifests will be charge fees and when those fees will be charged. The rule also contains the fee formula.

Many of the requirements in this rule can only be administered and enforced by the EPA. Those that are

not solely administered and enforced by the EPA were promulgated under the authority of Section 2(g)(3) of the e-Manifest Act. This authority is similar to that in Section 3006(g) of the Resource Conservation and Recovery Act (RCRA) which provides that the EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of the EPA. The is a fully authorized state. However; because the hazardous waste manifest is an area subject to special program consistency considerations and Section 2(g)(3) of the e-Manifest Act requires that all federal requirements promulgated under e-Manifest Act authority be given consistent effect in all states, authorized state programs are still required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The purpose of this change is to adopt the appropriate revisions into Rule R315-264.

4. Summary of the new rule or change:

Various subsections of Section R315-264-71 were amended as required by the e-Manifest rule including requirements for submission of paper manifests and imposition of user fees.

The references to the appendix to Rule R315-262 that contained manifest instructions was deleted from Subsections R315-264-1086(c)(4)(i) and R315-264-1086(d)(4)(i) because this appendix has been deleted.

References to sections of 40 CFR 265 located throughout Section R315-264-1086 that are being adopted into Rule R315-265 during this rulemaking were amended to reflect this change. (EDITOR'S NOTE: The proposed amendment to Rule R315-265 is under ID No. 52568 in this issue, March 1, 2020, in the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because the does not operate any hazardous waste treatment, storage, or disposal facilities (TSDFs) it will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore, any agency that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore, impossible to determine if there will be any cost increase to the state budget due to these revisions. It is anticipated that any state agency that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests. Implementation of these rule changes by the Division of Waste Management and Radiation Control will not result in an increase or decrease to the state budget because the revisions do not increase or decrease the workload of the Division needed to enforce the rule.

B) Local governments:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore, realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because there are no local governments operating any hazardous waste treatment, storage, or disposal facilities (TSDFs) they will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by the EPA onto their customers and therefore, any local government that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore, impossible to determine if there will be any cost increase to local government budgets due to these revisions. It is anticipated that any local government that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Currently, there approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are small businesses but due to the number of businesses it is not practical to determine which are small businesses. The list of North American Industry Classification System (NAICS) codes associated with businesses that may be affected by this amendment

includes 85 codes. As stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any small business that ships hazardous waste should already be following the rules. Any costs or savings to small businesses are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any small businesses that are in addition to those created by following the EPA's rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are non-small businesses but due to the number of businesses it is not practical to determine which are non-small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. For a complete listing of NAICS codes used in this analysis, please contact the agency. The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system and are required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program.

The revisions to the federal rules became effective nationally on June 30, 2018. At the time that these rules became effective, 3,830 businesses were required to comply with the rules as amended. In the document entitled Regulatory Impact Analysis EPA's 2017 Final Rule Establishing User Fees for the RCRA Electronic Hazardous Waste System (e-Manifest) dated December 2017, the EPA estimates the regulatory impact of the rule revisions. The document concludes that there are fiscal impacts to businesses involved in the treatment, storage, and disposal of hazardous waste because EPA is required to recoup the cost of developing and maintaining the e-Manifest system and has chosen to charge a per manifest fee to those facilities that receive hazardous waste. These costs may be passed along to businesses that generate hazardous waste by the receiving businesses but, without knowledge of private contracts between these business entities it is not possible to determine if this is actually happening. The document also concludes that there will be a cost savings to businesses involved the generation, transport, and receiving of hazardous waste due to time and material savings relative to the activities that were being performed with paper manifests that will now be done electronically. The is adopting these rule revisions in order to maintain equivalency with the Federal program. It is not anticipated that adoption of these rule revisions will result in any additional fiscal regulatory impact beyond those created by compliance with the regulations adopted by the EPA.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently there are no persons other than small businesses, businesses, or local governments that have submitted a notification that they are a generator, transporter, or receiver of hazardous waste and households are exempt from having to comply with the hazardous waste regulations thus, exempting individual persons from having to comply with hazardous waste shipping requirements.

Additionally, as stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any persons other than small businesses, businesses, or local governments that may be shipping hazardous waste should already be following the rules. Any costs to persons other than small businesses, businesses, or local governments are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any such persons that are in addition to those created by following the EPA's rules.

F) Compliance costs for affected persons:

It is anticipated that there will not be any additional compliance costs for affected persons due to the adoption of these rule changes because the is simply adopting these rules as required by the EPA to maintain the equivalency of our program to that of the EPA. The rule changes being adopted are administered at the federal government level by the EPA.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The use of manifests for the shipment of hazardous waste is a national system overseen by the EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Because these rule changes are being administered by the EPA and are already in effect nationally, it is not anticipated that their adoption by the will have any fiscal impact beyond the impact created by the federal adoption of the rule changes.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section19-6-104	Section 19-6-105	Section 19-6-106

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:

	First Incorporation
Official Title of Materials Incorporated (from title page)	Title 40: Protection of Environment, Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program
Publisher	Office of the Federal Register, National Archives and Records Administration
Date Issued	January 3, 2018

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-264-71. Manifest System, Recordkeeping, and Reporting -- Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent shall sign and date the manifest as indicated in Subsection R315-264-71(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent shall:

(i) Sign and date[~~, by hand,~~] each copy of the manifest;

(ii) Note any discrepancies, as defined in Subsection R315-264-72(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy, Page [~~3~~]2, of the manifest to the generator,

(v) Paper manifest submission requirements are:

[~~(v)~~](A) Options for compliance on June 30, 2018. [~~Within 30 days of delivery,~~]Beginning on June 30, 2018, send the top copy, Page 1, of [~~the Manifest~~]any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing[~~-~~], or [~~In~~]in lieu of [~~mailing this~~]submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data[~~-string~~] file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.[~~Any data or image files transmitted to EPA under Subsection R315-264-71(a) shall be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.~~]

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy, Page 1, of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) The owner or operator of a facility receiving hazardous waste subject to Sections R315-262-80 through 262-84 from a foreign source shall:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s), EPA Form 8700-22A; and

(ii) Send a copy of the manifest within 30 days of delivery to EPA using the addresses listed in Subsection R315-262-82(e) until the facility can submit such a copy to the e-Manifest system per Subsection R315-264-71(a)(2)(v).

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator's certification, and signatures; the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in Subsection R315-264-72(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper. The Director does not intend that the owner or operator of a facility whose procedures under R315-264-13(c) include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. Subsection R315-264-72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper, if the manifest has not been received within 30 days after delivery, to the generator; and

Comment: Subsection R315-262-23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of Rule R315-262. The provisions of Sections R315-262-15, R315-262-16, and R315-262-17 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Sections R315-262-15, R315-262-16, and R315-262-17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under Subsection R315-262-17(f).

(d) As per Subsection R315-262-84(d)(2)(xv), within three working days of the receipt of a shipment subject to Sections R315-262-80 through 262-84 the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under Section R315-264-71 if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state

or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-264-71 in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Division of Waste Management and Radiation Control inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-264-71 if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20, Designated Facility Certification of Receipt, and note any discrepancies in Item 18, Discrepancy Indication Space, of the paper replacement manifest,

(2) The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) Imposition of user fee for [~~electronic manifest use~~]manifest submissions.

(1) As prescribed in 40 CFR 264.1311, and determined in 40 CFR 264.1312, which are adopted and incorporated by reference, [~~An~~]an owner or operator who is a user of the electronic manifest [~~format may~~]system shall be assessed a user fee by EPA for the [~~origination or~~]submission and processing of each electronic and paper manifest. [~~An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators shall submit to the electronic manifest system operator under Subsection R315-264-71(a)(2)(v).~~]EPA shall [~~maintain and~~]update [~~from time to time~~]the [~~current~~]schedule of [~~electronic manifest system~~]user fees[~~, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR 262~~] and publish them to the user community, as provided in 40 CFR 264.1313, which is adopted and incorporated by reference.

(2) An owner or operator subject to user fees under Section R315-264-71 shall make user fee payments in accordance with the requirements of 40 CFR 264.1314, which is adopted and incorporated by reference, subject to the informal fee dispute resolution process of 40 CFR 264.1316, which is adopted and incorporated by reference, and subject to the sanctions for delinquent payments under 40 CFR 264.1315, which is adopted and incorporated by reference.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person, such as the waste handler, shown on the manifest.

(1) Interested persons shall make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission shall include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifests for which data are being corrected;

(ii) The item numbers of the original manifest that is the subject of the submitted corrections; and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of their knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement shall be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in Subsection R315-264-71(l)(3), and with notice of the corrections to other interested persons shown on the manifest.

R315-264-1086. Standards: Containers.

(a) The provisions of Section R315-264-1086 apply to the control of air pollutant emissions from containers for which Subsection R315-264-1082(b) references the use of Section R315-264-1086 for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to Section R315-264-1086 in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in Subsection R315-264-1086(b)(2) apply to the container.

(i) For a container having a design capacity greater than 0.1 cubic meters and less than or equal to 0.46 cubic meters, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-264-1086(c).

(ii) For a container having a design capacity greater than 0.46 cubic meters that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-264-1086(c).

(iii) For a container having a design capacity greater than 0.46 cubic meters that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-264-1086(d).

(2) When a container having a design capacity greater than 0.1 cubic meters is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in Subsection R315-264-1086(e) at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-264-1086(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, e.g., a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsections R315-264-1086(c)(1)(ii) or (c)(1)(iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-264-1086, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include

those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in [~~40 CFR~~]Section R315-265[~~-~~]-1081[~~, which is adopted by reference,~~] is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., does not meet the conditions for an empty container as specified in Subsection R315-261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to container standards of Sections R315-264-1080 through 1090. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest,[~~ in the appendix to Rule R315-262~~] [~~(~~]EPA Forms 8700-22 and 8700-22A[~~)~~], as required under Section R315-264-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(c)(4)(iii).

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(c)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 cubic meters or greater, which do not meet applicable DOT regulations as specified in Subsection R315-264-1086(f), are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-264-1086(f).

(ii) A container that operates with no detectable organic emissions as defined in [~~40 CFR ~~]Section R315-265[~~-~~]-1081[~~, which is adopted by reference,~~] and determined in accordance with the procedure specified in Subsection R315-264-1086(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-264-1086(h).

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-264-1086(d) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-264-1086, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in [~~40 CFR~~]Section R315-265[~~.~~]-1081[~~, which is adopted by reference,~~] is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., does not meet the conditions for an empty container as specified in Subsection R35-261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Sections R315-264-1080 through. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest,[~~ in the appendix to Rule R315-262~~] [~~(~~]EPA Forms 8700-22 and 8700-22A[~~)~~], as required under Section R315-264-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(d)(4)(iii).

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(d)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-264-1086(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-264-1086(e)(2)(i) and (e)(2)(ii).

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-264-1087.

(3) Safety devices, as defined in [~~40 CFR~~]Section R315-265[~~.~~]-1081[~~, which is adopted by reference,~~] may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-264-1086(e)(1).

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of Sections R315-264-1086 through 1090 shall inspect and monitor the closed-vent systems and control devices as specified in Subsection R315-264-1087.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of Sections R315-264-1086 through 1090 shall prepare and maintain the records specified in Subsection R315-264-1089(d).

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-264-1086(e) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsection R315-264-1086(c)(1)(i) or (d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178-Specifications for Packaging or 49 CFR part 179-Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B-Exemptions; 49 CFR part 172-Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173-Shippers-General Requirements for Shipments and Packages; and 49 CFR part 180-Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with Sections R315-264-1086 through 1090, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in Subsection R315-264-1086(f)(4).

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with Sections R315-264-1086 through 1090, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirement of Subsection R315-264-1086(d)(1)(ii), the procedure specified in Subsection R315-264-1083(d) shall be used.

(1) Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-264-1086(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of +/- 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

KEY: hazardous waste, TSD facilities
Date of Enactment or Last Substantive Amendment: [~~October 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R315-265**	**Filing No. 52568**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Waste Management	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
3. Purpose of the new rule or reason for the change:
In September 2012, the US Congress passed legislative bill number S. 710 directing EPA to establish an e-Manifest system. President Obama signed the e-Manifest Act into law on October 5, 2013 (Public law P. L. 112-195). The Act authorizes EPA to collect user fees to

recover the costs associated with developing and running e-Manifest. EPA implemented the law with two rulemaking actions.

The first rulemaking was published in the Federal Register on February 7, 2014 (79 FR 7518) and has already been adopted into Title R315 of the Utah Administrative Code. This rule revised the regulatory requirements for the RCRA hazardous waste manifest system to allow the use of electronic manifests in addition to the existing paper manifests.

The second rulemaking was published in the Federal Register on January 3, 2018 (83 FR 420). This rule contains a schedule of user fees to cover EPA's cost of building and running the e-Manifest system and e-Manifest program. It announced the date when the system became active and EPA began to accept electronic manifests. The rule addresses which users of manifests will be charge fees and when those fees will be charged. The rule also contains the fee formula.

Many of the requirements in this rule can only be administered and enforced by EPA. Those that are not solely administered and enforced by EPA were promulgated under the authority of Section 2(g)(3) of the e-Manifest Act. This authority is similar to that in Section 3006(g) of RCRA which provides that EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. The is a fully authorized state. However; because the hazardous waste manifest is an area subject to special program consistency considerations and Section 2(g)(3) of the e-Manifest Act requires that all federal requirements promulgated under e-Manifest Act authority be given consistent effect in all states, authorized state programs are still required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program. The purpose of this change is to adopt the appropriate revisions into Rule R315-265.

4. Summary of the new rule or change:

Sections R315-265-1030 through R315-265-1035 and Sections R315-265-1080 through R315-265-1090 are removed from the list of parts of 40 CFR 265 that are adopted and incorporated by reference found in Section R315-265-1 because they are being adopted into Rule R315-265. This is part of an on-going effort to adopt into state rules those sections of 40 CFR 265 that need to be included in Rule R315-265 to add clarity and convenience for regulated entities in Utah.

One change is made to Subsection R315-265-71(a)(2)(i) so that the rule now simply requires a manifest to be signed and dated. This change reflects that fact that with the e-Manifest system user can sign electronically.

Due to an error during previous rulemaking Subsections R315-265-72(e) and R315-265-72(f) contained errors. These errors are corrected.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rules.

Because the does not operate any hazardous waste treatment, storage, or disposal facilities (TSDFs) it will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by EPA onto their customers and therefore, any agency that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore, impossible to determine if there will be any cost increase to the state budget due to these revisions. It is anticipated that any state agency that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests. Implementation of these rule changes by the Division of Waste Management and Radiation Control will not result in an increase or decrease to the state budget because the revisions do not increase or decrease the workload of the Division needed to enforce the rule.

B) Local governments:

Any cost or savings attributed to the implementation of these rule revisions have already been realized because these revisions became effective at the Federal level on June 30, 2018. The use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Any entity anywhere in the country shipping hazardous waste must comply with the regulations and will therefore, realize any costs or savings resulting from the compliance regardless of whether or not the adopts the revisions to the rule.

Because there are no local governments operating any hazardous waste treatment, storage, or disposal facilities (TSDFs), they will not be charged any user fees associated with the e-Manifest system. It is possible that TSDFs may pass any e-Manifest user fees that they are assessed by EPA onto their customers and therefore, any

local government that generates hazardous waste and ships that waste to a TSDF could see an increase in their waste disposal fees. Without being privy to the details of any contracts between generators of hazardous waste and the various TSDFs, it is impossible to determine if this is happening and therefore, impossible to determine if there will be any cost increase to local government budgets due to these revisions. It is anticipated that any local government that ships hazardous waste could see a small cost savings by using the e-Manifest system due to not having to purchase and use paper hazardous waste shipping manifests.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Currently, there approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are small businesses but due to the number of businesses it is not practical to determine which are small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. As stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. The revisions to the federal rules became effective nationally in June of 2018 and any small business that ships hazardous waste should already be following the rules.

Any costs or savings to small businesses are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any small businesses that are in addition to those created by following the EPA's rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There approximately 3,830 businesses in Utah that could be affected by these revisions. Many of these businesses are non-small businesses but due to the number of businesses it is not practical to determine which are non-small businesses. The list of NAICS codes associated with businesses that may be affected by this amendment includes 85 codes. For a complete listing of NAICS codes used in this analysis, please contact the agency. The use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system and are required to adopt the e-Manifest provisions into their rules in order to maintain equivalency with the Federal program.

The revisions to the federal rules became effective nationally on June 30, 2018. At the time that these rules became effective, 3,830 businesses were required to comply with the rules as amended. In the document entitled Regulatory Impact Analysis EPA's 2017 Final Rule Establishing User Fees for the RCRA Electronic Hazardous Waste System (e-Manifest) dated December 2017, the EPA estimates the regulatory impact of the rule revisions. The document concludes that there are fiscal impacts to businesses involved in the treatment, storage, and disposal of hazardous waste because EPA is required to recoup the cost of developing and maintaining the e-Manifest system and has chosen to charge a per manifest fee to those facilities that receive hazardous waste. These costs may be passed along to businesses that generate hazardous waste by the receiving businesses, but without knowledge of private contracts between these business entities it is not possible to determine if this is actually happening.

The document also concludes that there will be a cost savings to businesses involved the generation, transport, and receiving of hazardous waste due to time and material savings relative to the activities that were being performed with paper manifests that will now be done electronically. The is adopting these rule revisions in order to maintain equivalency with the Federal program. It is not anticipated that adoption of these rule revisions will result in any additional fiscal regulatory impact beyond those created by compliance with the regulations adopted by EPA.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently, there are no persons other than small businesses, businesses, or local governments that have submitted a notification that they are a generator, transporter, or receiver of hazardous waste and households are exempt from having to comply with the hazardous waste regulations thus exempting individual persons from having to comply with hazardous waste shipping requirements. Additionally, as stated previously, the use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system.

The revisions to the federal rules became effective nationally in June of 2018 and any persons other than small businesses, businesses, or local governments that may be shipping hazardous waste should already be following the rules. Any costs to persons other than small businesses, businesses, or local governments are a result of following the EPA's rules. Therefore, it is not anticipated that adoption of these rule changes by the will result in any costs or savings to any such persons that are in addition to those created by following the EPA's rules.

F) Compliance costs for affected persons:

It is anticipated that there will not be any additional compliance costs for affected persons due to the adoption of these rule changes because the is simply

adopting these rules as required by EPA to maintain the equivalency of our program to that of EPA. The rule changes being adopted are administered at the federal government level by the EPA.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The use of manifests for the shipment of hazardous waste is a national system overseen by EPA. State agencies in authorized states have authority to enforce some, but not all, provisions of the manifest system. Because these rule changes are being administered by the EPA and are already in effect nationally, it is not anticipated that their adoption by the will have any fiscal impact beyond the impact created by the federal adoption of the rule changes.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-104	Section 19-6-105	Section 19-6-106

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:

	First Incorporation
Official Title of Materials Incorporated (from title page)	Title 40: Protection of Environment, Part 265 - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program
Publisher	Office of the Federal Register, National Archives and Records Administration
Date Issued	January 3, 2018

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/13/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	**Date:**	2/13/2020

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-265-1. Incorporation, General -- Purpose, Scope, and Applicability.

40 CFR 265.270 through 265.282, 265.300 through 265.316, 265.340 through 265.352, 265.370 through 265.383, 265.400 through 265.406, 265.430, 265.440 through 265.445, [~~265.1030 through 265.1035,~~]265.1050 through 265.1064, [~~265.1080 through 265.1091,~~]265.1100 through 265.1102, 265.1200 through 265.1202, 265.1300 through 265.1316 and Appendices I and III through VI of 40 CFR 265, 2015 edition, as amended by 81 FR 85827, are adopted and incorporated by reference except that "Director" is substituted for all references to "Regional Administrator", and for all references to "EPA" or "Environmental Protection Agency" except for references to "EPA identification number" and where EPA is used in reference to actions under Subsection R315-268-42(b) and in Subsection R315-265-71(a)(3).

(a) The purpose of Rule R315-265 is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in [~~40 CFR~~]Subsection R315-265[~~-~~]-1080(b), [~~which is adopted and incorporated by reference,~~]the standards of Rule R315-265, and of Sections R315-264-552, R315-264-553, and R315-264-554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and Section R315-270-10 until either a permit is issued under Rule R315-270 or until applicable Rule R315-265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA, failed to file Part A of the permit application as required by Subsections R315-270-10 (e) and (g), or both. These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in Rule R315-265 or Rule R315-261.

Comment: As stated in section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., Rules R315-270 and R315-124, the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(c) The requirements of Rule R315-265 do not apply to:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

Comment: These Rule R315-265 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection R315-265-1(b).

(2) Reserved

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

Comment: The owner or operator of a facility under Subsections R315-265-1(c)(1) through (3) is subject to the requirements of Rule R315-264 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122, or are required by 40 CFR 144.14.

(4) Reserved

(5) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-265 by Section R315-262-14;

(6) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), (3), and (4), except to the extent they are referred to in Rule R315-279 or Sections R315-266-20 through 266-23, R315-266-70, R315-266-80, or R315-266-100 through 266-112.

(7) A generator accumulating waste on site in compliance with applicable conditions for exemption in Sections R315-262-14 through 262-17 and Sections R315-262-200 through 262-216 and R315-262-230 through 262-233, except to the extent the requirements of Rule R315-265 are included in those sections;

(8) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(9) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Section R315-268-40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-265-17(b).

(11)(i) Except as provided in Subsection R315-265-1(c)(11)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Rule R315-265 shall comply with all applicable requirements of Sections R315-265-30 through 265-37 and Sections R315-265-50 through 265-56.

(iii) Any person who is covered by Subsection R315-265-1(c)(11)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Rule R315-265 and Rule R315-124 for those activities.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(13) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and Subsection R315-265-17(b), Sections R315-265-171, and 265-172 are complied with.

(14) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below. These handlers are subject to regulation under Rule R315-273, when handling the below listed universal wastes.

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4; and

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-273-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(d) The following hazardous wastes shall not be managed at facilities subject to regulation under Rule R315-265.

(1) EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, or FO27 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of Subsection R315-264-250(c) as well as all other applicable requirements of Sections R315-265-250 through 265-260;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR 265.352, which is adopted by reference; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR 265.383, which is adopted by reference.

(e) The requirements of Rule R315-265 apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in Rule R315-268, and the Rule R315-268 standards are considered material conditions or requirements of the Rule R315-265 interim status standards.

R315-265-71. Manifest System, Recordkeeping, and Reporting -- Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent shall sign and date the manifest as indicated in Subsection R315-265-71(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent shall:

(i) Sign and date[~~, by hand,~~] each copy of the manifest;

(ii) Note any discrepancies, as defined in Subsection R315-265-72(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy, Page 2, of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy, Page 1, of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy, Page1, of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) The owner or operator of a facility that receives hazardous waste subject to Sections R315-262-80 through 265-84 from a foreign source shall:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s), EPA Form 8700-22A; and

(ii) Send a copy of the manifest to EPA using the addresses listed in Subsection R315-262-82(e) within 30 days of delivery until the facility can submit such a copy to the e-Manifest system per Subsection R315-265-71(a)(2)(v).

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generator's certification, and signatures, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in Subsection R315-265-72(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper;

Comment: The Director does not intend that the owner or operator of a facility whose procedures under Subsection R315-265-13(c) include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. Subsection R315-265-72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper, if the manifest has not been received within 30 days after delivery, to the generator; and

Comment: Subsection R315-262-23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of Rule R315-262. The provisions of Sections R315-262-15, R315-262-16, and R315-262-17 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Sections R315-262-15, R315-262-16, and R315-262-17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under Subsection R315-262-17(f).

Comment: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) As per Subsection R315-262-84(d)(2)(xv), within three working days of the receipt of a shipment subject to Sections R315-262-80 through 262-84, the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with this Section R315-265-71 in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this Section R315-265-71 if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20, Designated Facility Certification of Receipt, and note any discrepancies in Item 18, Discrepancy Indication Space, of the replacement manifest,

(2) The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the EPA e-Manifest system, and

(4) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator

shall retain this original copy among its records for at least three years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use.

(1) As prescribed in 40 CFR 265.1311, and determined in 40 CFR 265.1312, which are adopted and incorporated by reference, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR 265.1313, which is adopted and incorporated by reference.

(2) An owner or operator subject to user fees under Section R315-265-71 shall make user fee payments in accordance with the requirements of 40 CFR 265.1314, subject to the informal fee dispute resolution process of 40 CFR 265.1316, and subject to the sanctions for delinquent payments under 40 CFR 265.1315, which are adopted and incorporated by reference.

(k) Electronic manifest signatures.

(1) Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person, for example, waste handler, shown on the manifest.

(1) Interested persons shall make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission shall include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement shall be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in Subsection R315-265-71(l)(3), and with notice of the corrections to other interested persons shown on the manifest.

R315-265-72. Manifest System, Recordkeeping, and Reporting -- Manifest Discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences, as defined by Subsection R315-265-72(b), between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, for example, with telephone conversations. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in Subsection R315-261-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this Section R315-265-72, it shall ensure that either the delivering transporter retains custody of the waste, or the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under Subsections R315-265-72(e) or (f).

(e) Except as provided in Subsection R315-265-72(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with Subsection R315-262-20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space in Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block, Item 8, of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest, Item 18a.

(5) Write the DOT description for the rejected load or the residue in Item 9, U.S. DOT Description, of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with Subsections R315-265-72 (e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in Subsection R315-265-72(f)(7), for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with Subsection R315-262-20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block, Item 8, of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest, Item 18a.

(5) Write the DOT description for the rejected load or the residue in Item 9, U.S. DOT Description, of the new manifest and write the container types, quantity, and volumes of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation,

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with Subsections R315-265-72(f)(1), (2), (3), (4), (5), (6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility shall also comply with the exception reporting requirements in Subsection R315-262-42(a).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in Subsection R315-261-7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

R315-265-1030. Air Emission Standards for Process Vents--Applicability.

(a) The regulations in Sections R315-265-1030 through R315-265-1035 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section R315-265-1.

(b) Except for Subsections R315-265-1034(d) and R315-265-1034(e), Sections R315-265-1030 through R315-265-1035 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of Rule R315-270; or

(2) A unit, including a hazardous waste recycling unit, that is not exempt from permitting under the provisions of Section R315-262-17, for example, a hazardous waste recycling unit that is not a 90-day tank or container, and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Rule R315-270; or

(3) A unit that is exempt from permitting under the provisions of Section R315-262-17, for example, a 90-day tank or container, and is not a recycling unit under the requirements of Section R315-261-6.

(4) The requirements of Sections R315-265-1032 through R315-265-1035 apply to process vents on hazardous waste recycling units previously exempt under Subsection R315-261-6(c)(1). Other exemptions under Section R315-261-4, and Subsection R315-265-1(c) are not affected by these requirements.

(c) Reserved.

(d) The requirements of Sections R315-265-1030 through R315-265-1035 do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to Sections R315-265-1030 through R315-265-1035 are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

R315-265-1031. Air Emission Standards for Process Vents--Definitions.

As used in Sections R315-265-1030 through R315-265-1035, all terms shall have the meaning given them in Section R315-264-1031, RCRA, and Rules R315-260 through R315-266.

R315-265-1032. Air Emission Standards for Process Vents--Standards: Process Vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction or air or steam stripping operations managing hazardous wastes with organic concentrations at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h, 3 lb/h, and 2.8 Mg/yr, 3.1 tons/yr, or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of Subsection R315-265-1032(a), the closed-vent system and control device shall meet the requirements of Section R315-265-1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Subsection R315-265-1034(c).

(d) If an owner or operator and the Director do not agree on determinations of vent emissions and emission reductions or both or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in Subsection R315-265-1034(c) shall be used to resolve the disagreement.

R315-265-1033. Air Emission Standards for Process Vents--Standards: Closed-Vent Systems and Control Devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of Sections R315-265-1030 through R315-265-1035 shall comply with the provisions of Section R315-265-1033.

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-265-1030 through R315-265-1035 on the effective date that the facility becomes subject to the requirements of Sections R315-265-1030 through R315-265-1035 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-265-1030 through R315-265-1035 for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the requirements of Sections R315-265-1030 through R315-265-1035 when operation begins, shall comply with the rules immediately, for example, shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-265-1030 through R315-265-1035 shall comply with all requirements of Sections R315-265-1030 through R315-265-1035 as soon as practicable but no later than 30 months after the amendment's effective date. If control equipment required by Sections R315-265-1030 through R315-265-1035 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-265-1030 through R315-265-1035. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of Sections R315-265-1030 through R315-265-1035 after December 8, 1997, due to an action other than those described in Subsection R315-265-1033(a)(2)(iii) shall comply with all applicable requirements immediately, for example, shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-265-1030 through R315-265-1035; the 30-month implementation schedule does not apply.

(b) A control device involving vapor recovery, for example, a condenser or adsorber, shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-265-1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device, for example, a vapor incinerator, boiler, or process heater, shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees Celsius. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in Subsection R315-265-1033(e)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in Subsection R315-265-1033(f)(2)(iii).

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm, 300 Btu/scf, or greater, if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm, 200 Btu/scf, or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in Subsection R315-265-1033(e)(2).

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-265-1033(e)(3), of less than 18.3 m/s, 60 ft/s, except as provided in Subsections R315-265-1033(d)(4)(ii) and R315-265-1033(d)(4)(iii).

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-265-1033(e)(3), equal to or greater than 18.3 m/s, 60 ft/s, but less than 122 m/s, 400 ft/s, is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm, 1,000 Btu/scf.

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-265-1033 (e)(3), less than the velocity, Vmax, as determined by the method specified in Subsection R315-265-1033(e)(4), and less than 122 m/s, 400 ft/s, is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, Vmax, as determined by the method specified in Subsection R315-265-1033(e)(5).

(6) A flare used to comply with Section R315-265-1033 shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the equation found in 40 CFR 265.1033(e)(2), which is adopted and incorporated by reference.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate, in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed, free, cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, Vmax, for a flare complying with Subsesction R315-265-1033(d)(4)(iii) shall be determined by the following equation:

Log10(Vmax) = (HT + 28.8)/31.7

where:

HT = The net heating value as determined in Subsection R315-265-1033(e)(2).

28.8 = Constant.

31.7 = Constant.

(5) The maximum allowed velocity in m/s, Vmax, for an air-assisted flare shall be determined by the following equation:

Vmax = 8.706 + 0.7084(HT)

where:

8.706 = Constant.

0.7084 = Constant.

HT = The net heating value as determined in Subsection R315-265-1033(e)(2).

(f) The owner or operator shall monitor and inspect each control device required to comply with Section R315-265-1033 to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees Celsius or plus or minus 0.5 degrees Celsius, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees Celsius or plus or minus 0.5 degrees Celsius, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees Celsius or plus or minus 0.5 degrees Celsius, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter or parameters that indicate good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of plus or minus 1 percent of the temperature being monitored in degrees Celsius or plus or minus 0.5 degrees Celsius, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit, for example, product side.

(vii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by Subsections R315-265-1033(f) (1) and R315-265-1033(f)(2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of Section R315-265-1033.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Subsection R315-265-1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately if carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Subsection R315-265-1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Subsection R315-265-1035(b)(4)(iii)(G).

(i) An owner or operator of an affected facility seeking to comply with the provisions of Sections R315-265-1030 through R315-265-1035 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(j) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in Subsection R315-265-1034(b), and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system if the control device is operating.

(k) The owner or operator shall monitor and inspect each closed-vent system required to comply with Section R315-265-1033 to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with Subsection R315-265-1033(j)(1) shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to Section R315-265-1033. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in Subsection R315-265-1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in Subsection R315-265-1033(k)(1)(i), the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed, for example, a welded joint between two sections of hard piping or a bolted and gasketed ducting flange, shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in Subsection R315-265-1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced, for example, a section of damaged hard piping is replaced with new hard piping, or the connection is unsealed, for example, a flange is unbolted.

(B) Closed-vent system components or connections other than those specified in Subsection R315-265-1033(k)(1)(ii)(A) shall be monitored annually and at other times as requested by the Director, except as provided for in Subsection R315-265-1033(n), using the procedures specified in Subsection R315-265-1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of Subsection R315-265-1033(k)(3).

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-265-1035.

(2) Each closed-vent system that is used to comply with Subsection R315-265-1033(j)(2) shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to Section R315-265-1033. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1033(k)(3).

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-265-1035.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in Subsection R315-265-1033(k)(3)(iii).

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in Section R315-265-1035.

(l) Closed-vent systems and control devices used to comply with provisions of Sections R315-265-1030 through R315-265-1035 shall be operated at all times if emissions may be vented to them.

(m) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-600 through R315-264-603; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Sections R315-265-1030 through R315-265-1035 and Sections R315-265-1080 through R315-265-1090 or of Sections R315-264-1030 through R315-264-1036 and Sections R315-264-1080 through R315-264-1090; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through R315-264-351; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 265.340 through 352, which are adopted and incorporated by reference.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through R315-266-112; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through R315-266-112.

(n) Any components of a closed-vent system that are designated, as described in Subsection R315-265-1035(c)(9), as unsafe to monitor are exempt from the requirements of Subsection R315-265-1033(k)(1)(ii)(B) if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-265-1033(k)(1)(ii)(B); and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in Subsection R315-265-1033(k)(1)(ii)(B) as frequently as practicable during safe-to-monitor times.

R315-265-1034. Air Emission Standards for Process Vents--Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of Sections R315-265-1030 through R315-265-1035 shall comply with the test methods and procedures requirements provided in Section R315-265-1034.

(b) If a closed-vent system is tested for compliance with no detectable emissions, as required in Subsection R315-265-1033(k), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Subsection R315-265-1032(a) and with the total organic compound concentration limit of Subsection R315-265.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas shall be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas if the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least one hour under the conditions that exist if the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18 he equation found in 40 CFR 264.1034(c)(1)(iv)(A), is adopted and incorporated by reference.

Where:

Eh = Total organic mass flow rate, kg/h.

Q2sd = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h.

n = Number of organic compounds in the vent gas.

Ci = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18.

MWi = Molecular weight of organic compound i in the vent gas, kg/kg-mol.

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg).

10−6 = Conversion from ppm.

(B) For sources utilizing Method 25A.

Eh = (Q)(C)(MW)(0.0416)(10−6).

Where:

Eh = Total organic mass flow rate, kg/h.

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h.

C = Organic concentration in ppm, dry basis, as determined by Method 25A.

MW = Molecular weight of propane, 44.

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg).

10−6 = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

EA = (Eh) (H).

where:

EA = Total organic mass emission rate, kg/y.

Eh = Total organic mass flow rate for the process vent, kg/h.

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates, Eh, as determined in Subsection R315-265-1034(c)(1)(iv), and by summing the annual total organic mass emission rates, EA, as determined in Subsection R315-265-1034(c)(1)(v), for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown,

and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in Subsection R315-265-1034(c)(1).

(ii) Safe sampling platforms.

(iii) Safe access to sampling platforms.

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of Sections R315-265-1030 through R315-265-1035, the owner or operator shall make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator shall take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846; or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of Sections R315-265-1030 through R315-265-1035 or by the date when the waste is first managed in a waste management unit, whichever is later; and

(2) For continuously generated waste, annually; or

(3) If there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) If an owner or operator and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using direct measurement as specified at Subsection R315-265-1034(d)(1).

R315-265-1035. Air Emission Standards for Process Vents--Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of Sections R315-265-1030 through R315-265-1035 shall comply with the recordkeeping requirements of Section R315-265-1035.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of Sections R315-265-1030 through R315-265-1035 may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record the following information in the facility operating record:

(1) For facilities that comply with the provisions of Subsection R315-265-1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by the effective date that the facility becomes subject to the provisions of Sections R315-265-1030 through R315-265-1035.

(2) Up-to-date documentation of compliance with the process vent standards in Section R315-265-1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, for example, the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, for example, identify the hazardous waste management units on a facility plot plan; and

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values, for example, temperatures, flow rates or vent stream organic compounds and concentrations, that represent the conditions that result

in maximum organic emissions, such as if the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action, for example, managing a waste of different composition or increasing operating hours of affected waste management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

(i) A description of how it is determined that the planned test is going to be conducted if the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Section R315-265-1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by Subsection R315-265-1033(j).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions", incorporated by reference as specified in Section R315-260-11, or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsections R315-265-1035(b)(4)(iii)(A) through R315-265-1035(b)(4)(iii)(G) may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Subsection R315-265-1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling and drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist if the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Subsection R315-265-1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Subsection R315-265-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Sections R315-265-1030 through R315-265-1035 shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Subsections R315-265-1033(f)(1) and R315-265-1035(f)(2).

(3) Monitoring, operating and inspection information required by Subsections R315-265-1033(f) through R315-265-1033(k).

(4) Date, time, and duration of each period that occurs while the control device is operating if any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees Celsius, period if the combustion temperature is below 760 degrees Celsius.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, period if the combustion zone temperature is more than 28 degrees Celsius below the design average combustion zone temperature established as a requirement of Subsection R315-265-1035(b)(4)(iii)(A).

(iii) For a catalytic vapor incinerator, period if:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 degrees Celsius below the average temperature of the inlet vent stream established as a requirement of Subsection R315-265-1035(b)(4)(iii)(B); or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of Subsection R315-265-1035(b)(4)(iii)(B).

(iv) For a boiler or process heater, period if:

(A) Flame zone temperature is more than 28 degrees Celsius below the design average flame zone temperature established as a requirement of Subsection R315-265-1035(b)(4)(iii)(C); or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of Subsection R315-265-1035(b)(4)(iii)(C).

(v) For a flare, period if the pilot flame is not ignited.

(vi) For a condenser that complies with Subsection R315-265-1033(f)(2)(vi)(A), period if the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of Subsection R315-265-1035(b)(4)(iii)(E).

(vii) For a condenser that complies with Subsection R315-265-1033(f)(2)(vi)(B), period if:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 degrees Celsius above the design average exhaust vent stream temperature established as a requirement of Subsection R315-265-1035 (b)(4)(iii)(E); or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 degrees Celsius above the design average coolant fluid temperature at the condenser outlet established as a requirement of Subsection R315-265-1035 (b)(4)(iii)(E).

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Subsection R315-265-1033(f)(2)(vii)(A), period if the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of Subsection R315-265-1035 (b)(4)(iii)(F).

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Subsection R315-265-1033(f)(2)(vii)(B), period if the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of Subsection R315-265-1035 (b)(4)(iii)(F).

(5) Explanation for each period recorded under Subsection R315-265-1035 (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For carbon adsorption systems operated subject to requirements specified in Subsections R315-265-1033(g) or R315-265-1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For carbon adsorption systems operated subject to requirements specified in Subsection R315-265-1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to Subsection R315-265-1033(n) shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Subsection R315-265-1033(n), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) If a leak is detected as specified in Subsection R315-265-1033(k), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there shall be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by Subsections R315-265-1035(c)(3) through R315-265-1035(c)(10) shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device shall be recorded in the facility operating record.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section R315-265-1032 including supporting documentation as required by

Subsection R315-265-1034(d)(2) if application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

R315-265-1080. Air Emission Standards for Tanks, Surface Impoundments, and Containers--Applicability.

(a) The requirements of Sections R315-265-1080 through R315-265-1090 apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either Sections R315-265-170 through R315-265-178, Sections R315-265-190 through R315-265-202, or Sections R315-265-220 through R315-265-231 except as Section R315-265-1 and Subsection R315-265-1080(b) provide otherwise.

(b) The requirements of Sections R315-265-1080 through R315-265-1090 do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

(2) A container that has a design capacity less than or equal to 0.1 m3.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste, except to implement an approved closure plan, and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or Utah authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable regulation codified under the Utah Air Conservation Act. For the purpose of complying with Subsection R315-265-1080(b), a tank for which the air emission control includes an enclosure, as opposed to a cover, shall be in compliance with the enclosure and control device requirements of Subsection R315-265-1085(i), except as provided in Subsection R315-265-1083(c)(5).

(8) A tank that has a process vent as defined in Section R315-264-1031.

(c) For the owner and operator of a facility subject to Sections R315-265-1080 through R315-265-1090 who has received a final permit under RCRA section 3005 prior to December 6, 1996, the following requirements apply:

(1) The requirements of Sections R315-264-1080 through R315-264-1090 shall be incorporated into the permit if the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d).

(2) Until the date when the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d), the owner and operator is subject to the requirements of Sections R315-265-1080 through R315-265-1090.

(d) The requirements of Sections R315-265-1080 through R315-265-1090, except for the recordkeeping requirements specified in Subsection R315-265-1090(i), are administratively stayed for a tank or a container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations if the owner or operator of the unit meets all of the following conditions:

(1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of Subsection R315-265-1080(d), "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(2) The owner or operator prepares documentation, in accordance with the requirements of Subsection R315-265-1090(i), explaining why an undue safety hazard would be created if air emission controls specified in Sections R315-265-1085 through R315-265-1088 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of Subsection R315-265-1080(d)(1).

(3) The owner or operator notifies the Director in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of Subsection R315-265-1080(d)(1) are managed at the facility in tanks or containers meeting the conditions of Subsection R315-265-1080(d)(2). The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

R315-265-1081. Air Emission Standards for Tanks, Surface Impoundments, and Containers --Definitions.

As used in Sections R315-265-1080 through R315-265-1090, all terms not defined herein shall have the meaning given to them in RCRA and Rules R315-260 through R315-266.

"Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section R315-265-1084.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that if the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover, for example, a sampling port cap, manually operated, for example a hinged access lid or hatch, or automatically operated, for example, a spring-loaded pressure relief valve.

"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings, such as access hatches, sampling ports, gauge wells, that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

"External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 degrees C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 degrees C is equal to or greater than 20 percent by weight.

"Internal floating roof" means a cover that rests or floats on the material surface, but not necessarily in complete contact with it, inside a tank that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions, such as, temperature, agitation, pH effects of combining wastes, etc., reasonably expected to occur in the tank. For the purpose of Sections R315-265-1080 through R315-265-1090, maximum organic vapor pressure is determined using the procedures specified in Subsection R315-265-1084(c).

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric, envelope, spans the annular space between the metal sheet and the floating roof.

"No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in Subsection R315-265-1084(d).

"Point of waste origination" means as follows:

(1) If the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in Rule R315-261. In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Utah Air Conservation Act.

(2) If the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

"Point of waste treatment" means the point where a hazardous waste to be treated in accordance with Subsection R315-265-1083(c)(2) exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

"Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of Sections R315-265-1080 through R315-265-1090, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only if the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

"Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

"Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

"Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the waste in accordance with the requirements of Section R315-265-1084. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase, (0.1 Y/X), which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius shall be included. Appendix VI of 40 CFR 265, which is adopted and incorporated by reference, presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

"Waste determination" means performing all applicable procedures in accordance with the requirements of Section R315-265-1084 to determine whether a hazardous waste meets standards specified in Sections R315-265-1080 through R315-265-1090. Examples of a waste determination include performing the procedures in accordance with the requirements of Section R315-265-1084 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

"Waste stabilization" process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B, Paint Filter Liquids Test, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

R315-265-1082. Air Emission Standards for Tanks, Surface Impoundments, and Containers ---Schedule for Implementation of Air Emission Standards.

(a) Owners or operators of facilities existing on December 6, 1996 and subject to Sections R315-265-170 through R315-265-178, Sections R315-265-190 through R315-265-202, and Sections R315-265-220 through R315-265-231 shall meet the following requirements:

(1) Install and begin operation of all control equipment or waste management units required to comply with Sections R315-265-1080 through R315-265-1090 and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with Subsection R315-265-1083(c) by December 6, 1996, except as provided for in Subsection R315-265-1082(a)(2).

(2) If control equipment or waste management units required to comply with Sections R315-265-1080 through R315-265-1090 cannot be installed and if operation or modifications of production or treatment processes to satisfy exemption criteria in accordance with Subsection R315-265-1083(c) cannot be completed by December 6, 1996, the owner or operator shall:

(i) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997.

(ii) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment, waste management units, and production or treatment process modifications; initiation of on-site installation of control equipment or waste management units, and modifications of production or treatment processes; completion of control equipment or waste management unit installation, and production or treatment process modifications; and performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes meet the applicable standards of Sections R315-265-1080 through R315-265-1090.

(iii) For facilities subject to the recordkeeping requirements of Section R315-265-73, the owner or operator shall enter the implementation schedule specified in Subsection R315-265-1082(a)(2)(ii) in the operating record no later than December 6, 1996.

(iv) For facilities not subject to Section R315-265-73, the owner or operator shall enter the implementation schedule specified in Subsection R315-265-1082(a)(2)(ii) in a permanent, readily available file located at the facility no later than December 6, 1996.

(b) Owners or operators of facilities and units in existence on the effective date of a statutory, EPA, or Utah regulatory amendment that renders the facility subject to Sections R315-265-170 through R315-265-178, Sections R315-265-190 through R315-265-202, or Sections R315-265-220 through R315-265-231 shall meet the following requirements:

(1) Install and begin operation of control equipment or waste management units required to comply with Sections R315-265-1080 through R315-265-1090, and complete modifications of production or treatment processes to satisfy exemption criteria of Subsection R315-265-1083(c) by the effective date of the amendment, except as provided for in Subsection R315-265-1082(b)(2).

(2) If control equipment or waste management units required to comply with Sections R315-265-1080 through R315-265-1090 cannot be installed and begin operation, or if modifications of production or treatment processes to satisfy exemption criteria of Subsection R315-265-1083(c) cannot be completed by the effective date of the amendment, the owner or operator shall:

(i) Install and begin operation of the control equipment or waste management unit, and complete modification of production or treatment processes as soon as possible but no later than 30 months after the effective date of the amendment.

(ii) For facilities subject to the recordkeeping requirements of Section R315-265-73, enter and maintain the implementation schedule specified in Subsection R315-265-1082(a)(2)(ii) in the operating record no later than the effective date of the amendment, or

(iii) For facilities not subject to Section R315-265-73, the owner or operator shall enter and maintain the implementation schedule specified in Subsection R315-265-1082(a)(2)(ii) in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(c) Owners and operators of facilities and units that become newly subject to the requirements of Sections R315-265-1080 through R315-265-1090 after December 8, 1997 due to an action other than those described in Subsection R315-265-1082(b) shall comply with all applicable requirements immediately, for example, shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-265-1080 through R315-265-1090; the 30-month implementation schedule does not apply.

(d) The Director may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, if special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of Sections R315-265-1080 through R315-265-1090.

R315-265-1083. Air Emission Standards for Tanks, Surface Impoundments, and Containers --- Standards: General.

(a) Section R315-265-1083 applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to Sections R315-265-1080 through R315-265-1090.

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in Sections R315-265-1085 through R315-265-1088, as applicable to the hazardous waste management unit, except as provided for in R315-265-1083(c).

(c) A tank, surface impoundment, or container is exempt from standards specified in Sections R315-265-1085 through R315-265-1088, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in Subsection R315-265-1084(a). The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (Ct) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in Subsection R315-265-1084(b).

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Subsection R315-265-1084(b).

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in Subsection R315-265-1084(b).

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (Rbio) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in Subsection R315-265-1084(b).

(B) The total actual organic mass biodegradation rate (MRbio) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in Subsection R315-265-1084(b).

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in Sections R315-265-1085 through R315-265.1088, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The Director considers a drain system that meets the requirements of Subsection R307-214-2(29), which incorporates 40 CFR part 63, subpart RR---National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in Subsection R315-265-1084(a). The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Subsection R315-265-1084(b).

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in Subsections R315-265-1084(b) and R315-265-1084(a), respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through R315-264-351; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 265.340 through 265.352, which is adopted and incorporated by reference.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through R315-266-112, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through R315-266-112.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of Subsections R315-265-1083(c)(2)(i) through R315-265-1083(c)(2)(vi), the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Subsection R315-265-1083(c)(2)(iv).

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in Rule R315-268--Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste"; or

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the Board for the waste in Subsection R315-268-42(a), or have been removed or destroyed by an equivalent method of treatment approved in accordance with Subsection R315-268-42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under Section R315-214-1, which incorporates 40 CFR part 61, subpart FF--National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Director may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Section R315-265-1083 as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of Subsection R315-265-1084(a). The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of Subsection R315-265-1084(b).

(2) In performing a waste determination pursuant to Subsection R315-265-1083(d)(1), the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in Subsection R315-265-1083(d)(2)(ii).

(ii) If the Director determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Director may choose an appropriate method.

(3) If the owner or operator is requested to perform the waste determination, the Director may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) If the results of the waste determination performed or requested by the Director do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of Subsection R315-265-1083(d)(1) shall be used to establish compliance with the requirements of Sections R315-265-1080 through R315-265-1090.

(5) If the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Director may elect to establish compliance with Sections R315-265-1080 through R315-265-1090 by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of Subsection R315-265-1084(a).

(ii) Results of the waste determination performed or requested by the Director showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with Sections R315-265-1080 through R315-265-1090 except in a case as provided for in Subsection R315-265-1083(d)(5)(iii).

(iii) If the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste, for example, test results, measurements, calculations, and other documentation, and recorded in the facility records in accordance with the requirements of Subsection R315-265-1084(a) and Section R315-265-1090 shall be considered by the Director together with the results of the waste determination performed or requested by the Director in establishing compliance with Sections R315-265-1080 through R315-265-1090.

R315-265-1084. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Waste Determination Procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Subsection R315-265-1083(c)(1) from using air emission

controls in accordance with standards specified in Sections R315-265-1085 through R315-265-1088, as applicable to the waste management unit.

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of Subsection R315-265-1083(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination if changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in Subsection R315-265-1083(c)(1).

(2) For a waste determination that is required by Subsection R315-265-1084(a)(1), the average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in Subsection R315-265-1084(a)(3) or by knowledge as specified in Subsection R315-265-1084(a)(4).

(3) Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Identification. The owner or operator shall identify and record the point of waste origination for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste origination in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under Subsection R315-265-1084(a)(3)(ii)(C), shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods if the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (fm25D). If the owner or operator elects to adjust test data, the adjustment shall be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (fm25D) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in Subsections R315-265-1084(a)(3)(iii)(A) or (B) and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X, which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations.

(A) The average VO concentration on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with Subsections R315-265-1084(a)(3) (ii) and (iii) and the equation found in 40 CFR 265.1084(a)(3)(iv)(A), which is adopted and incorporated by reference.

(B) For the purpose of determining Ci, for individual waste samples analyzed in accordance with Subsection R315-265-1084(a)(3)(iii), the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(1) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(2) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius.

(v) Provided that the test method is appropriate for the waste as required under Subsection R315-265-1084(a)(3)(iii), the Director will determine compliance based on the test method used by the owner or operator as recorded pursuant to Subsection R315-265-1090(f)(1).

(4) Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the waste.

(iii) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (fm25D).

(iv) In the event that the Director and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in Subsection R316-265-1084(a)(3) shall be used to establish compliance with the applicable requirements of Sections R315-265-1080 through R315-265-1090. The Director may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of Subsection R315-265-1084(a)(3)(iii).

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of Subsections R315-265-1083 (c)(2)(i) through (c)(2)(vi) from using air emission controls in accordance with standards specified in Sections R315-265-1085 through R315-265-1088, as applicable to the waste management unit.

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of Subsections R315-265-1083(c)(2), R315-265-1083(c)(3), or R315-265-1083(c)(4) from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination if changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in Subsections R315-265-1083(c)(2), R315-265-1083(c)(3), or R315-265-1083(c)(4) are not achieved.

(2) The owner or operator shall designate and record the specific provision in Subsection R315-265-1083(c)(2) under which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in Subsections R315-265-1084(b)(3) through (b)(9).

(3) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

(i) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste treatment in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under Subsection R316-265-1084(b)(3)(ii)(C), shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods if the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can

also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius. If the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of Subsections R315-264-1082(c)(2)(i) through (c)(2)(vi), or Subsections R315-265-1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent in the waste is multiplied by the appropriate constituent-specific adjustment factor (fm25D). If the owner or operator elects to adjust test data, the adjustment shall be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (fm25D) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in Subsections R315-265-1084(a)(3)(iii)(A) or (B) and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X, which can also be expressed as 1.8 × 10−6 atmospheres/gram-mole/m3, at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. The average VO concentration on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with Subsections R315-265-1084(b)(3)(ii) and (iii) and the equation found in 40 CFR 265.1084(b)(3)(iv), which is adopted and incorporated by reference.

(v) Provided that the test method is appropriate for the waste as required under Subsection R315-265-1084(b)(3)(iii), compliance shall be determined based on the test method used by the owner or operator as recorded pursuant to Subsection R315-265-1090(f)(1).

(4) Procedure to determine the exit concentration limit for a treated hazardous waste.

(i) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(ii) If a single hazardous waste stream is identified in Subsection R315-265-1084(b)(4)(i), then the exit concentration limit shall be 500 ppmw.

(iii) If more than one hazardous waste stream is identified in Subsection R315-265-1084(b)(4)(i), then the average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of Subsection R315-265-1084(a). The exit concentration limit shall be calculated by using the results determined for each individual hazardous waste stream and the equation found in 40 CFR 265.1084(b)(4)(iii), which is adopted and incorporated by reference.

(5) Procedure to determine the organic reduction efficiency for a treated hazardous waste.

(i) The organic reduction efficiency for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(ii) All hazardous waste streams entering the treatment process and all hazardous waste streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

(iii) For each run, information shall be determined for each hazardous waste stream identified in Subsection R315-265-1084(b)(5)(ii) using the following procedures:

(A) The mass quantity of each hazardous waste stream entering the process and the mass quantity of each hazardous waste stream exiting the process shall be determined.

(B) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process during the run shall be determined in accordance with the requirements of Subsection R315-265-1084(a)(3). The average VO concentration at the point of waste treatment of each waste stream exiting the process during the run shall be determined in accordance with the requirements of Subsection R315-265-1084(b)(3).

(iv) The waste volatile organic mass flow entering the process and the waste volatile organic mass flow exiting the process shall be calculated by using the results determined in accordance with Subsection R315-265-1084(b)(5)(iii) and the equations found in 40 CFR 265.1084(b)(5)(iv), which is adopted and incorporated by reference.

(v) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with Subsection R315-265-1084(b)(5)(iv) and the equation found in 40 CFR 265.1084(b)(5)(v), which is adopted and incorporated by reference.

(6) Procedure to determine the organic biodegradation efficiency for a treated hazardous waste.

(i) The fraction of organics biodegraded shall be determined using the procedure specified in 40 CFR part 63, appendix C.

(ii) The organic biodegradation efficiency shall be calculated by using the equation found in 40 CFR 265.1084(b)(6)(ii), which is adopted and incorporated by reference.

(7) Procedure to determine the required organic mass removal rate for a treated hazardous waste.

(i) All of the hazardous waste streams entering the treatment process shall be identified.

(ii) The average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of Subsection R315-265-1084(a).

(iii) For each individual hazardous waste stream that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate and the density of the hazardous waste stream at the point of waste origination shall be determined.

(iv) The required organic mass removal rate shall be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the equation found in 40 CFR 265.1084(b)(7)(iv), which is adopted and incorporated by reference.

(8) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

(i) The MR shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste volatile organic mass flow entering the process (Eb) and the waste volatile organic mass flow exiting the process (Ea) shall be determined in accordance with the requirements of Subsection R315-265-1084(b)(5)(iv).

(iii) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of Subsection R315-265-1084(b)(8)(ii) and the following equation:

MR = Eb -- Ea

Where:

MR = Actual organic mass removal rate, kg/hr.

Eb = Waste volatile organic mass flow entering process as determined in accordance with the requirements of Subsection R315-265-1084(b)(5)(iv), kg/hr.

Ea = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of Subsection R315-265-1084(b)(5)(iv), kg/hr.

(9) Procedure to determine the actual organic mass biodegradation rate (MRbio) for a treated hazardous waste.

(i) The MRbio shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste organic mass flow entering the process (Eb) shall be determined in accordance with the requirements of Subsection R315-265-1084(b)(5)(iv).

(iii) The fraction of organic biodegraded (Fbio) shall be determined using the procedure specified in 40 CFR part 63, appendix C.

(iv) The MRbio shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of Subsections R315-265-1084(b)(9)(ii) and (b)(9)(iii), respectively, and the following equation:

MRbio = Eb × Fbio

Where:

MRbio = Actual organic mass biodegradation rate, kg/hr.

Eb = Waste organic mass flow entering process as determined in accordance with the requirements of Subsection R315-265-1084(b)(5)(iv), kg/hr.

Fbio = Fraction of organic biodegraded as determined in accordance with the requirements of Subsection R315-265-1084(b)(9)(iii).

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in Subsection R315-265-1085(c).

(2) An owner or operator shall use either direct measurement as specified in Subsection R315-265-1084(c)(3) or knowledge of the waste as specified by Subsection R315-265-1084(c)(4) to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," incorporated by reference---refer to Section R315-260-11;

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92, incorporated by reference---refer to Section R315-260-11; and

(E) Any other method approved by the Director.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in Subsection R315-265-1085(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with Sections R315-265-1080 through R315-265-1090:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface, for example, a location where organic vapor leakage could occur, on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed if the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air, less than 10 ppmv hydrocarbon in air, and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. If the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. If the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn, for example, some pressure relief devices, the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except if monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in Subsection R315-265-1084(d)(9). If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

R315-265-1085. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Standards: Tanks.

(a) The provisions of Section R315-265-1085 apply to the control of air pollutant emissions from tanks for which Subsection R315-265-1083(b) references the use of Section R315-265-1085 for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to Section R315-265-1085 in accordance with the following requirements, as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in Subsections R315-265-1085(b)(1)(i) through R315-265-1085(b)(1)(iii), the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in Subsection R315-265-1085(c) or the Tank Level 2 controls specified in Subsection R315-265-1085(d).

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m3 but less than 151 m3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with Subsection R315-265-1085(b)(1)(i).

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in Section R315-265-1081.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in Subsections R315-265-1085(b)(1)(i) through R315-265-1085(b)(1)(iii), the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of Subsection R315-265-1085(d). Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in Subsection R315-265-1085(b)(1)(i).

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in Subsections R315-265-1085(c)(1) through R315-265-1085(c)(4):

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in Subsection R315-265-1084(c). Thereafter, the owner or operator shall perform a new determination if changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in Subsection R315-265-1085(b)(1)(i), as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank, for example, a removable cover mounted on an open-top tank, or may be an integral part of the tank structural design, for example, a horizontal cylindrical tank equipped with a hatch.

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that if the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating if hazardous waste is managed in the tank, except as provided for in Subsections R315-265-1085(c)(2)(iii)(B)(1) and (2).

(1) During periods it is necessary to provide access to the tank for performing the activities of Subsection R315-265-1085(c)(2)(iii)(B)(2), venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(2) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for the removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) If a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions if the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in Subsection R315-265-1085(l).

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1085(k).

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(b).

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in Subsection R315-265-1085(e);

(2) A tank equipped with an external floating roof in accordance with the requirements specified in Subsection R315-265-1085(f);

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-265-1085(g);

(4) A pressure tank designed and operated in accordance with the requirements specified in Subsection R315-265-1085(h); or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in Subsection R315-265-1085(i).

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in Subsections R315-265-1085(e)(1) through R315-265-1085(e)(3).

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-265-1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents, vacuum breaker vents, and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) If the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed, for example, no visible gaps. Rim space vents are to be set to open only if the internal floating roof is not floating or if the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in Subsection R315-265-1085(e)(3)(iii):

(A) Visually inspect the internal floating roof components through openings on the fixed-roof, for example, manholes and roof hatches, at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in Subsection R315-265-1085(e)(3)(ii) for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by Subsections R315-265-1085(e)(3)(ii) or R315-265-1085(e)(3)(iii), the owner or operator shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-265-1085(e)(3)(iv)(B).

(B) If a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1085(k).

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(b).

(4) Safety devices, as defined in Section R315-265-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-265-1085(e).

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in Subsections R315-265-1085(f)(1) through R315-265-1085(f)(3).

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except if the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-265-1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents, vacuum breaker vents, and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened if the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) If the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times if the roof is floating, except if the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or if the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except if measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except if the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of one year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of Subsections R315-265-1085(f)(3)(i)(A) and R315-265-1085(f)(3)(i)(B).

(D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(1) The seal gap measurements shall be performed at one or more floating roof levels if the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely, without forcing or binding against the seal, between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under Subsection R315-265-1085(f)(3), the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection R315-265-1085(f)(1)(ii).

(E) In the event that the seal gap measurements do not conform to the specifications in Subsection R315-265-1085(f)(1)(ii), the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1085(k).

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(b).

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to Section R315-265-1085. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-265-1085(l).

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1085 (k).

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(b).

(iii) Prior to each inspection required by Subsections R315-265-1085(f)(3)(i) or R315-265-1085(f)(3)(ii), the owner or operator shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under Subsection R315-265-1085(f)(3)(i), written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-265-1085(f)(3)(iii)(C).

(C) If a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the

unplanned inspection, may be sent so that it is received by the Director at least 7 calendar days before refilling the tank.

(4) Safety devices, as defined in Section R315-265-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-265-1085(f).

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in Subsections R315-265-1085(g)(1) through R315-265-1085(g)(3).

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-265-1088.

(2) If a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section R315-265-1088.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to Section R315-265-1085. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-265-1085(l).

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1085(k).

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(b).

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Subsection R315-265-1084(d).

(3) If a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in Subsections R315-265-1085(h)(3)(i) or R315-265-1085(h)(3)(ii).

(i) At those times when opening of a safety device, as defined in Section R315-265-1081, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section R315-265-1088.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in Subsections R315-265-1085(i)(1) through R315-265-1085(i)(4).

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section R315-265-1088.

(3) Safety devices, as defined in Section R315-265-1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of Subsections R315-265-1085(i)(1) and R315-265-1085(i)(2).

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in Section R315-265-1088.

(j) The owner or operator shall transfer hazardous waste to a tank subject to Section R315-265-1085 in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in Subsection R315-265-1085(j)(2), to the tank from another tank subject to Section R315-265-1085 or from a surface impoundment subject to Section R315-265-1086 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system if it meets the requirements of 40 CFR part 63, subpart RR--National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-265-1085(j)(1) do not apply if transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in Subsection R315-265-1083(c)(1) at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-265-1083(c)(2).

(iii) The hazardous waste meets the requirements of Subsection R315-265-1083(c)(4).

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of Subsections R315-265-1085(c)(4), R315-265-1085(e)(3), R315-265-1085(f)(3), or R315-265-1085(g)(3) as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-265-1085(k)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-265-1080 through R315-265-1090, subsequent inspection and monitoring may be performed at intervals longer than one year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of Sections R315-265-1080 through R315-265-1090, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of Section R315-265-1085, only those portions of the tank cover and those connections to the tank, for example, fill ports, access hatches, gauge wells, etc., that are located on or above the ground surface.

R315-265-1086. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Standards: Surface Impoundments.

(a) The provisions of Section R315-265-1086 apply to the control of air pollutant emissions from surface impoundments for which Subsection R315-265-1083(b) references the use of Section R315-265-1086 for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in Subsection R315-265-1086(c); or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-265-1086(d).

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in Subsections R315-265-1086(c)(1) through R315-265-1086(c)(3).

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in Subsection R315-265-1086(c)(1)(ii)(A) and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in Subsection R315-265-1086(c)(1)(v), each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that if the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane

fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) If a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to Section R315-265-1086. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-265-1086(g).

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1086(f).

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(c).

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in Subsections R315-265-1086(d)(1) through R315-265-1086(d)(3).

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure if the control device is operating, the closure devices shall be designed to operate such that if the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure if the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in Subsection R315-265-1084(d).

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-265-1088.

(2) If a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

(ii) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section R315-265-1088.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date

that the surface impoundment becomes subject to Section R315-265-1086. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-265-1086(g).

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1086(f).

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-265-1090(c).

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to Section R315-265-1086 in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in Subsection R315-265-1086(e)(2), to the surface impoundment from another surface impoundment subject to Section R315-265-1086 or from a tank subject to Section R315-265-1085 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system if it meets the requirements of 40 CFR part 63, subpart RR--National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-265-1086(e)(1) do not apply if transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in Subsection R315-265-1083(c)(1) at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-265-1083(c)(2).

(iii) The hazardous waste meets the requirements of Subsection R315-265-1083(c)(4).

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of Subsections R315-265-1086(c)(3) or R315-265-1086(d)(3) as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-265-1086(f)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-265-1080 through R315-265-1090, subsequent inspection and monitoring may be performed at intervals longer than one year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of Sections R315-265-1080 through R315-265-1090 as frequently as practicable during those times when a worker can safely access the cover.

R315-265-1087. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Standards: Containers.

(a) The provisions of Section R315-265-1087 apply to the control of air pollutant emissions from containers for which Subsection R315-265-1083(b) references the use of Section R315-265-1087 for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to Section R315-265-1087 in accordance with the following requirements, as applicable to the container, except if the special provisions for waste stabilization processes specified in Subsection R315-265-1087(b)(2) apply to the container.

(i) For a container having a design capacity greater than 0.1 m3 and less than or equal to 0.46 m3, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-265-1087(c).

(ii) For a container having a design capacity greater than 0.46 m3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-265-1087(c).

(iii) For a container having a design capacity greater than 0.46 m3 that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-265-1087(d).

(2) If a container having a design capacity greater than 0.1 m3 is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in Subsection R315-265-1087(e) at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-265-1087(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that if the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, for example, a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, for example, a "portable tank" or bulk cargo container equipped with a screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsections R315-265-1087(c)(1)(ii) or R315-265-1087(c)(1)(iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) If a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) If the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) If discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-265-1087, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, for example, covers and closure devices are not required to be secured in the closed position on an empty container.

(B) If discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed if access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or if a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device shall be designed to operate with no detectable organic emissions if the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position if the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) If a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, for example, does not meet the conditions for an empty container as specified in Subsection R315-261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container if the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, for example, the date the container becomes subject to the container standards of Sections R315-265-1080 through R315-265-1090. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest, EPA Forms 8700-22 and 8700-22A, as required under Section R315-265-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1087(c)(4)(iii).

(ii) If a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container if the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1087(c)(4)(iii).

(iii) If a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m3 or greater, which do not meet applicable DOT regulations

as specified in Subsection R315-265-1087(f), are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-265-1087(f).

(ii) A container that operates with no detectable organic emissions as defined in Section R315-265-1081 and determined in accordance with the procedure specified in Subsection R315-265-1087(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-265-1087(h).

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-265-1087(d) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) If a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) If the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) If discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-265-1087, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, for example, covers and closure devices are not required to be secured in the closed position on an empty container.

(B) If discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed if access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or if a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission if the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position if the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in Section R315-265-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) If a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, for example, does not meet the conditions for an empty container as specified in Subsection R315-261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container if the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, for example, the date the container becomes subject to the container standards of Sections R315-265-1080 through R315-265-1090. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest, EPA Forms 8700-22 and 8700-22A, as required under Section R315-265-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1087(d)(4)(iii).

(ii) If a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator shall visually inspect the container and its cover and closure

devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container if the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-265-1087(d)(4)(iii).

(iii) If a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-265-1087(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-265-1087(e)(2)(i) and R315-265-1087(e)(2)(ii).

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-265-1088.

(3) Safety devices, as defined in Section R315-265-1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-265-1087(e)(1).

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of Sections R315-265-1080 through R315-265-1090 shall inspect and monitor the closed-vent systems and control devices as specified in Section R315-265-1088.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of Sections R315-265-1080 through R315-265-1090 shall prepare and maintain the records specified in Subsection R315-265-1090(d).

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-265-1087(e) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsections R315-265-1087(c)(1)(i) or R315-265-1087(d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178--Specifications for Packaging or 49 CFR part 179--Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B--Exemptions; 49 CFR part 172--Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173--Shippers--General Requirements for Shipments and Packages; and 49 CFR part 180--Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with Sections R315-265-1080 through R315-265-1090, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in Subsection R315-265-1087(f)(4).

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with Sections R315-265-1080 through R315-265-1090, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirements of Subsection R315-265-1087(d)(1)(ii), the procedure specified in Subsection R315-265-1084(d) shall be used.

(1) Each potential leak interface, for example, a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed if the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-265-1087(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A.

(2) A pressure measurement device shall be used that has a precision of plus or minus 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within five minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

R315-265-1088. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Standards: Closed-Vent Systems and Control Devices.

(a) Section R315-265-1088 applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of Sections R315-265-1080 through R315-265-1090.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in Subsection R315-265-1088(c).

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in Subsection R315-265-1033(j).

(3) If the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in Subsection R315-265-1088(b)(3)(i) or a seal or locking device as specified in Subsection R315-265-1088(b)(3)(ii). For the purpose of complying with Subsection R315-265-1088(b), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with Subsection R315-265-1088(b)(3), the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For Subsection R315-265-1088(b), a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with Subsection R315-265-1088(b)(3), the device shall be placed on the mechanism by which the bypass device position is controlled, for example, valve handle, damper lever, if the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Subsection R315-265-1033(k).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of Subsection R315-265-1033(c); or

(iii) A flare designed and operated in accordance with the requirements of Subsection R315-265-1033(d).

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of Section R315-265-1088 shall comply with the requirements specified in Subsections R315-265-1088(c)(2)(i) through R315-265-1088(c)(2)(vi).

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii), as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii) for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii) for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of Subsection R315-265-1088(c)(2)(i), for example, planned routine maintenance of a control device, during which the control device does not meet the specifications of Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii), as applicable, shall not exceed 240 hours per year, by recording the information specified in Subsection R315-265-1090(e)(1)(v).

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, and fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction, for example, periods if the control device is not operating or not operating normally, except in cases if it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The owner or operator using a carbon adsorption system to comply with Subsection R315-265-1088(c)(1) shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Subsections R315-265-1033(g) or R315-265-1033(h).

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of Subsection R315-265-1033(m), regardless of the average volatile organic concentration of the carbon.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with Subsection R315-265-1088(c)(1) shall operate and maintain the control device in accordance with the requirements of R315-265-1033(i).

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of Subsection R315-265-1088(c)(1) as follows:

(i) An owner or operator shall demonstrate using either a performance test as specified in Subsection R315-265-1088(c)(5)(iii) or a design analysis as specified in Subsection R315-265-1088(c)(5)(iv) the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under Rule R315-270 and has designed and operates the unit in accordance with the requirements of Sections R315-266-100 through R315-266-112; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of Sections R315-266-100 through R315-266-112.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in Subsection R315-265-1033(e).

(iii) For a performance test conducted to meet the requirements of Subsection R315-265-1088(c)(5)(i), the owner or operator shall use the test methods and procedures specified in Subsections R315-265-1034(c)(1) through R315-265-1034(c)(4).

(iv) For a design analysis conducted to meet the requirements of Subsection R315-265-1088(c)(5)(i), the design analysis shall meet the requirements specified in Subsection R315-265-1035(b)(4)(iii).

(v) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of Subsection R315-265-1088(c)(1) based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Director do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of Subsection R315-265-1088(c)(5)(iii). The Director may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Subsections R315-265-1033(f)(2) and R315-265-1033(k). The readings from each monitoring device required by Subsection R315-265-1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of Section R315-265-1088.

R315-265-1089. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Inspection and Monitoring Requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with Sections R315-265-1080 through R315-265-1090 in accordance with the applicable requirements specified in Sections R315-265-1085 through R315-265-1088.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by Subsection R315-265-1089(a). The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under Section R315-265-15.

R315-265-1090. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Recordkeeping Requirements.

(a) Each owner or operator of a facility subject to requirements in Sections R315-265-1080 through R315-265-1090 shall record and maintain the information specified in Subsections R315-265-1090(b) through R315-265-1090(j), as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections R315-265-1090(i) and R315-265-1090(j), records required by Section R315-265-1090 shall be maintained in the operating record for a minimum of three years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections R315-265-1090(i) and R315-265-1090(j) shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in Sections R315-265-1085 through R315-265-1088 in accordance with the conditions specified in Subsections R315-265-1080(d) or R315-265-1080(b)(7), respectively.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of Section R315-265-1085 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of Section R315-265-1085, the owner or operator shall record:

(i) A tank identification number, or other unique identification description as selected by the owner or operator.

(ii) A record for each inspection required by Section R315-265-1085 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section R315-265-1085, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by Subsection R315-265-1090(b)(1), the owner or operator shall record the following information, as applicable to the tank:

(i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in Subsection R315-265-1085(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of Subsection R315-265-1085(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-265-1085(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-265-1085(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by Subsection R315-265-1085(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Subsection R315-265-1085(f)(1), the records shall

include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in Subsection R315-265-1085(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-265-1090(e).

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of Section R315-265-1086 shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number, or other unique identification description as selected by the owner or operator.

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Subsection R315-265-1086(c).

(3) A record for each inspection required by Section R315-265-1086 that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Subsection R315-265-1086(f), the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in Subsection R315-265-1090(e).

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of Section R315-265-1087 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-265-1090(e).

(e) The owner or operator using a closed-vent system and control device in accordance with the requirements of Section R315-265-1088 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in Subsection R315-265-1090(e)(1)(ii) or by performance tests as specified in Subsection R315-265-1090 (e)(1)(iii) if the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in Subsection R315-265-1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsection R315-265-1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in Subsection R315-265-1035(b)(3) and all test results.

(iv) Information as required by Subsections R315-265-1035(c)(1) and R315-265-1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in Subsections R315-265-1090(e)(1)(v)(A) and R315-265-1090(e)(1)(v)(B) for those planned routine maintenance operations that would require the control device not to meet the requirements of Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of Subsections R315-265-1088(c)(1)(i), R315-265-1088(c)(1)(ii), or R315-265-1088(c)(1)(iii), as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in Subsections R315-265-1090(e)(1)(vi)(A) through R315-265-1090(e)(1)(vi)(C) for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Subsections R315-265-1088(c)(1)(i), 315-265-1088(c)(1)(ii), or 315-265-1088(c)(1)(iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction if gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Subsection R315-265-1088(c)(3)(ii).

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of Subsection R315-265-1083(c) shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in Subsections R315-265-1083(c)(1) or R315-265-1083(c)(2)(i) through R315-265-1090(c)(2)(vi), the owner or operator shall record the information used for each waste determination, for example, test results, measurements, calculations, and other documentation, in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or

operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of Section R315-265-1084.

(2) For tanks, surface impoundments, or containers exempted under the provisions of Subsections R315-265-1083(c)(2)(vii) or R315-265-1083(c)(2)(viii), the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to Subsections R315-265-1085(l) or R315-265-1086(g) shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to Sections R315-265-1080 through R315-265-1090 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of Sections R315-265-1080 through R315-265-1090 by documentation either pursuant to Sections R315-265-1080 through R315-265-1090, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by Section R315-265-1090.

(i) For each tank or container not using air emission controls specified in Sections R315-265-1085 through R315-265-1088 in accordance with the conditions specified in Subsection R315-265-1080(d), the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Subsection R315-265-1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in Subsection R315-265-1090(i)(1) are managed at the facility in tanks and containers. This description shall include the following information:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in Subsection R315-265-1090(i)(1) in the tanks and containers as described in Subsection R315-265-1090(i)(2) would create an undue safety hazard if the air emission controls, as required under Sections R315-265-1085 through R315-265-1088, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(j) For each hazardous waste management unit not using air emission controls specified in Sections R315-265-1085 through R315-265-1088 in accordance with the provisions of Subsection R315-265-1080(b)(7), the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

KEY: hazardous waste, TSD facilities, interim status
Date of Enactment or Last Substantive Amendment: [~~October 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R359-1**	**Filing No. 52583**

Agency Information

1. Department:	Governor
Agency:	Economic Development, Pete Suazo Utah Athletic Commission
Building:	World Trade Center
Street address:	60 E. South Temple
City, state:	Salt Lake City, UT 84111
Mailing address:	60 E. South Temple
City, state, zip:	Salt Lake City, UT 84111
Contact person(s):	

Name:	**Phone:**	**Email:**
Dane Ishihara	801-792-8764	dishihara@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Pete Suazo Utah Athletic Commission Act Rule

3. Purpose of the new rule or reason for the change:

The purpose of this rule filing is to update the designation of adjudicative proceedings for the Pete Sauzo Athletic Commission.

4. Summary of the new rule or change:

Section R359-1-401 is updated so that all adjudicative proceedings are designated as informal. Section R359-1-402 is modified to clarify the general process for adjudicative proceedings. Section R359-1-403 is modified to clarify the procedures for immediate license suspension. Section R359-1-404 is deleted. Section R359-1-405: is updated to reflect correct references.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no aggregate anticipated cost or savings to the state budget. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments. These changes merely update the procedures the office will follow when conducting electronic meetings.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no aggregate anticipated cost or savings to small businesses. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There is no aggregate anticipated cost or savings to non-small businesses. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This rule filing will not result in fiscal impact to businesses. These changes merely update the procedures the office will follow when conducting adjudicative proceedings.
B) Name and title of department head commenting on the fiscal impacts:
Val Hale, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 63N-10-202		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	3/31/2020

10. This rule change MAY become effective on:	4/7/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	**Date:**	2/14/2020

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-401. Designation of Adjudicative Proceedings.

(1) [~~Formal Adjudicative Proceedings.~~]An adjudicative proceeding before the commission of any of t[~~T~~]he following proceeding[~~s~~][~~ before the Commission are~~] is designated as an informal adjudicative proceeding[~~s~~]:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for:

(i) initial licensure;

(ii) reinstatement of a license; and

(iii) renewal of a license;

(c) any proceeding[~~s~~] conducted subsequent to the issuance of a cease and desist order; [~~and~~]

(d) the withholding of a purse by the Commission [~~pursuant to Subsection 63C-11-321(3)~~]under Section 63N-10-313.

[~~(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:~~

~~(a) approval or denial of applications for initial licensure;~~

~~(b) approval or denial of applications for reinstatement of a license; and~~]

([~~e~~]e) protests against the results of a [~~match~~]contest.

(2) An individual may seek an adjudicated hearing before the Commission for the matters listed in Subsection (1) above by submitting a written request to the Director within 30 days from the date of the action or result.

(3) Subject to the exception under Subsection 63G-4-202(3) or unless otherwise stipulated by all parties, a[~~A~~]ny other adjudicative proceeding before the Commission not specifically listed in under Subsection[~~s~~] (1)[~~ and (2)~~] above, is designated as an informal adjudicative proceeding.

R359-1-402. Adjudicative Proceedings in General.

(1) The procedure[~~s~~] for [~~formal~~]an adjudicative proceeding[~~s are~~] is under[~~set forth in~~] Section[~~s~~] 63G-4-201[~~63-46b-6 through 63-46b-10~~]; and this Rule.

[~~(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.~~

~~(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.~~

~~(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.~~]

(5) Unless t[~~T~~]he Commission determines otherwise, the Commission shall be designated as the sole presiding officer in any adjudicative proceeding[~~ where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to~~] and where applicable serve as the fact finder in any adjudicative proceeding[~~at evidentiary hearings~~].

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be[~~ issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be~~] signed by the Director or, in [~~his or her~~]the Director's absence, [~~by~~]the Chair of the Commission.

R359-1-403. Additional Procedures for Immediate License Suspension.

(1) [~~In accordance with~~]Under Subsection 63N-10-303(7)[~~63C-11-310(7)~~], the designated Commission member, or in the absence of a designated Commission member the Director may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing to the Director. The Commission shall schedule[~~convene~~] the hearing as soon as is reasonably practical but not later than [~~2~~]30 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

~~**[R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.**~~

~~(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.~~

~~(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.~~

~~(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.~~]

R359-1-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63NG-4-302[~~63-46b-13 of the Utah Administrative Procedures Act~~] or seek judicial review of the order pursuant to Section[~~s~~] 63G-4-401[~~63-46b-14 through 63-46b-17~~].

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [~~January 24, 2014~~]2020
Notice of Continuation: March 30, 2017
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R501-22**	**Filing No. 52578**

Agency Information

1. Department:	Human Services
Agency:	Administration, Administrative Services, Licensing
Building:	MASOB
Street address:	195 N 1950 W
City, state:	SALT LAKE CITY, UT
Mailing address:	195 N 1950 W
City, state, zip:	SALT LAKE CITY, UT 84116
Contact person(s):	

Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Elisabeth Kitchens	385-303-2953	ehkitchens@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Residential Support Programs

3. Purpose of the new rule or reason for the change:

The Office of Licensing needs to amend this rule to accommodate the needs of our sister agency the Division of Substance Abuse and Mental Health (DSAMH), in regard to capturing receiving centers under this rule category. Following comment from the Governor's Office, this also amends large portions of this rule to meet the standards set forth in the rulewriting manual.

4. Summary of the new rule or change:

This amendment adds receiving centers and addresses age groupings in youth homeless shelters. These changes have been perpetuated from comments received and discussed during the previous filings 30-day comment period. Following comment from the Governor's Office, this also amends large portions of this rule to meet the standards set forth in the rulewriting manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Office of Licensing's caseload is being distributed statewide across multiple licensors and any increase to caseloads will be nominal and offset by the licensing fees charged. There are no other anticipated costs or benefits to any entities outside the Department and homeless providers.

B) Local governments:

The shelters are already in operation in all of their respective jurisdictions, adding licensure to them will not have any fiscal impact on local governments. Receiving centers will be legislatively funded and will not have an impact on local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Receiving centers will be legislatively funded and are in most instances already in operation as licensees. Receiving Center licensure will allow them to comingle multiple license types under one roof which was not an approved practice prior to this rule change. Any positive fiscal impact via this change would be immeasurable.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

The changes in this rule submission will not have an impact on non-small businesses in Utah, as homeless shelters are small independent businesses distributed throughout the state . Receiving centers are being contracted and approved by DSAMH who is the pass-through agency for Medicaid funding to these entities. Licensure of these entities is required regardless of whether or not this rule is in effect.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

No person, entity, or public or private organization will be impacted by the implementation of this rule.

F) Compliance costs for affected persons:

There will be no compliance costs for anyone affected by the implementation of this amendment.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Ann Williamson, the Executive Director of the Department of Human Services, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this amendment will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-2-101		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Ann Williamson, Executive Director.	**Date:**	02/14/2020

R501. Human Services, Administration, Administrative Services, Licensing.
R501-22. Residential Support Programs.
R501-22-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office[~~of Licensing~~], shall license residential support programs according to the following rules.

R501-22-2. Purpose.

This rule establishes basic health and safety standards for residential support programs.

R501-22-3. Definitions.

[~~A.~~](1) Residential [~~S~~]support is defined in Section 62A-2-101.

[~~B.~~](2) Temporary [~~H~~]homeless [~~Y~~]youth shelter is defined in Section 62A-4a-501.

[~~C.~~](3) Emergency [~~H~~]homeless [~~S~~]shelter includes homeless resource center and means any facility, the primary purpose of which is to provide a temporary shelter for those experiencing homelessness in general or for specific populations of those experiencing homelessness and does not require occupants to sign leases or occupancy agreements.

[~~1.~~](a) Emergency s[~~S~~]helters must operate with priority of the safety of those needing [~~their~~]services and with an emphasis on transitioning into a more permanent housing setting.

(4) Receiving center means any facility operated with DHS approval to allow short-term residential support that may span multiple license types in order to assess and triage immediate client needs.

(a) Short-term residential support is intended to mitigate the initial identified problem, stabilize and return to the community as quickly and safely as possible.

(i) Stays lasting longer than 30 days shall only be permitted with individualized clinical documentation outlining the ongoing need and anticipated time frame for remaining in the receiving center setting.

(b) Placement in a receiving center is a voluntary alternative to a more restrictive placement and may not mandate treatment as a condition to residence.

(c) A receiving center is not a secure or lock-down facility.

R501-22-4. Administration.

(1)[~~A.~~] In addition to the following rules, all Residential Support Programs shall comply with Section R501-1-11[~~- Provider Code of Conduct and Client rights~~], Subsection R501-1-2[~~-~~](9)[~~/~~], R501-1-9[~~-~~](2) regarding critical incidents and Section R-501-14 regarding staff[~~/~~] or volunteer background screenings, applicable DHS contract requirements and all State and Federal Laws.

[~~B. Programs offering treatment shall also obtain the appropriate categorical DHS license for that treatment.~~]

(a) In the event of a conflict between any oversight entity's requirements and OL rule, the program will appropriately seek rule variances or initiate administrative discussion to obtain resolution.

(2) Programs may offer treatment through referrals or within the agency by voluntary participation of the clients.

(a) Programs offering treatment shall obtain the appropriate categorical DHS license for that treatment

(b) Programs that mandate treatment as a condition to admission require a Residential Treatment license and are not considered Residential Support.

(3)[~~C.~~] Programs shall have current program information readily available to the [~~O~~]office and the public, including a description of[~~:~~]:

(a)[~~1.~~] [~~P~~]program services;

(b)[~~2.~~] [~~T~~]the client population served;

(c)[~~3.~~] [~~P~~]program requirements and expectations;

(d)[~~4.~~] [~~I~~]information regarding any clinical and non-clinical services offered;

(e)[~~5.~~] [~~C~~]costs, fees, and expenses that may be assessed, including any non-refundable costs, fees or expenses; and

(f)[~~6.~~] [~~C~~]complaint reporting and resolution processes.

(4)[~~7.~~] A list of current staff and clients shall be available to the Office and onsite at all times.

(5)[~~8.~~] Emergency shelters providing primarily domestic violence services may replace identifying victim client information wherever required by this rule with non-identifying victim client numbers in accordance with VAWA and Federal Confidentiality Mandates.

(6)[~~D.~~] Programs serving those experiencing homelessness in settings with one or more contracted service provider shall identify all key decision makers and service providers associated with the site license application.

(a)[~~1.~~] All identified contractors shall be subject to all [~~L~~]licensing rules and requirements while operating in the licensed setting.

R501-22-5. Staffing.

(1)[~~A.~~] The program shall identify a director or qualified designee who shall be immediately available at all times that the program is in operation; the responsibilities of the manager shall be clearly defined.

(a)[~~1.~~] Whenever the manager is absent there shall be an employed and fully trained substitute to
assume managerial responsibility.

(b)[~~2.~~] With the exception of Emergency Homeless and Domestic Violence Shelters, adult programs are not required to provide twenty-four hour supervision.

(2)[~~B.~~] The program shall establish a policy and procedure that identifies situations requiring medical attention and who the program utilizes to meet the medical needs of the program's clients.

(3)[~~C.~~] Programs shall ensure at least one CPR[~~/~~] or First Aid trained or certified staff member is available onsite at all times with clients;

(4)[~~D.~~] Programs which utilize students and volunteers shall provide screening, training, and evaluation of the students[~~/~~] or volunteers.

(a)[~~1.~~] A [~~V~~]volunteer[~~s~~] providing care in all [~~E~~]emergency [~~H~~]homeless and [~~D~~]domestic [~~V~~]violence [~~S~~]shelters, without paid staff present, shall have direct communication access to designated staff at all times and shall have cleared background screenings prior to unsupervised client access. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

(5)[~~E.~~] Programs shall consider the dynamic[~~s~~] of the population in making a staffing decision[~~s~~] to maintain compliance with ratio and staffing requirement[~~s~~] of this rule.

R501-22-6. Direct Service.

(1)[~~A.~~] The program shall[~~:~~
~~1.~~] [~~I~~]identify and provide to the [~~O~~]office the organizational structure of the program including:

(a)[~~2.~~] [~~N~~]names and titles of owners, directors and individuals responsible for implementing all aspects of the program;[~~, and~~]

(b)[~~3.~~] [~~A~~]a job description, duties and qualifications for each job title;

(c)[~~4.~~] [~~D~~]disclose any potential conflict[~~s~~] of interest to the [~~O~~]office;

(d)[~~5.~~] [~~E~~]ensure that staff are licensed or certified in good standing as required and that unlicensed individuals providing direct client services shall do so only in accordance with the Mental Health Professional Practices Act;

(2)[~~B.~~] The program manager shall[~~:~~
~~1.~~] [~~T~~]train and monitor staff compliance regarding:

(a) [~~P~~]program policy and procedures;

(b) [~~T~~]the needs of the program's clients;

(c) [~~Office of Licensing r~~]Rule R501-22;

(d) the[~~ and~~] annual training on the Licensing Code of Conduct and client rights as outlined in Section R501-1-11; and

(e)[~~(d)~~] the emergency response plan.

(3)[~~2.~~] The program manager shall also [~~C~~]create and maintain a personnel file[~~s~~] for each staff member to include:

(a) any applicable qualification[~~s~~], experience, certification[~~s~~] [~~and~~]or license[~~s~~];

(b) approved and current [~~O~~]office [~~of Licensing~~]background screening, except as excluded in Section R501-14-17; and

(c)[~~C.~~] [~~T~~]training records with the date completed, topic and employee signature,[~~(s)~~] verifying completion.

(4)[~~D.~~] A [~~P~~]program[~~s~~] shall comply with Rule R501-1 [~~Office rules~~]and maintain the following[~~;~~]:

(a)[~~1.~~] [~~Maintain~~]proof of financial viability of the program;

(b)[~~2.~~] [~~Maintain~~]general liability insurance[~~;~~];

(c) professional liability insurance that covers all program staff[~~;~~];

(d) vehicle insurance for transporting [~~of~~]a client[~~s,~~];

(e) fire insurance;[~~ and~~]

(f) any additional insurance required to cover all program activities; and

(g)[~~3. Maintain~~] annual proof of completion for[~~of~~] the National Mental Health Services Survey (NMHSS), [~~annually~~]if providing mental health services.[~~; and~~]

(5)[~~4.~~] The program shall develop, implement and comply with policies and procedures sufficient to ensure the health and safety and meet the needs of the client population served. Policy[~~ies~~] and procedure[~~s~~] shall address at a minimum:

(a) [~~C~~]client eligibility;

(b) [~~I~~]intake and discharge process;

(c) [~~C~~]client rights as outlined in Section R501-1-11;

(d) [~~S~~]staff and client grievance procedures;

(e) [~~B~~]behavior management;

(f) [~~M~~]medication management;

(g) [~~C~~]critical incident reporting as outlined in Subsections R501-1-2[~~-~~](9) and R501-1-9[~~-~~](2);

(h) [~~E~~]emergency procedures;

(i) [~~T~~]transportation of clients to include requirement of [~~I~~]insurance, valid driver license, driver and client safety and vehicle maintenance;

(j) [~~F~~]firearm[~~s~~] policy, Subsection [~~see~~]R501-22-7[~~-~~](22)(c);

(k) [~~C~~]client safety including any unique circumstance[~~s~~] regarding physical facility, supervision, community safety and mixing populations; and

(l) [~~L~~]levels of client engagement offered by the program and what types of services are available to participants.

(6)[~~(m)~~] Any supplemental services that may be provided outside the scope of licensure and the process followed for obtaining informed consent to voluntarily participate in these services.

(7)[~~5.~~] A [~~P~~]program[~~s~~], excluding emergency homeless shelters whose requirements are outlined in Subsection R501-22-6[~~-~~](E), shall maintain client files to include the following:

(a) [~~C~~]client name, address, email address, phone numbers, date of birth and gender;

(b) [~~E~~]emergency contact names, including legal guardian where applicable, and a minimum of: an actual address, actual email address or actual phone numbers to reach identified contacts;

(c) [~~A~~]all information that could affect health safety or well-being of the client to include all medications, allergies, chronic conditions or communicable diseases;

(d) [~~A~~]a statement indicating how the client meets the admission criteria;

(e) [~~D~~]description of presenting situation;

(f) [~~I~~]intake assessment;

(g) [~~G~~]grievance and complaint procedure;[~~ and~~]

(h) [~~D~~]discharge documentation;

(i) [~~S~~]service plan and services provided; [~~and~~]

(j) any referral arrangements made by the program;

(k)[~~(j)~~] [~~A~~]any clinical services are recommended by treatment or service plans signed by a clinical professional and provided by appropriately credentialed and trained staff;

(l)[~~(k)~~] [~~A~~]a signed fee disclosure statement including Medicaid number, insurance information and identification of any other entities that are billed for the client's services;

(m)[~~(l)~~] [~~C~~]client or guardian signed consent or court order of commitment to services in lieu of signed consent for all treatment and non-clinical services[~~.~~];

(n)[~~(m)~~] [~~A~~]all crisis interventions or critical incident reports;

(o)[~~(n)~~] [~~D~~]detailed documentation of all clinical and non-clinical services provided with date and signature of staff completing each entry; and

(p)[~~(o)~~] [~~C~~]client treatment[~~/~~] or service plans shall offer and document as many life enhancing opportunities as are appropriate and reasonable.

(8)[~~E.~~] Emergency [~~H~~]homeless [~~S~~]shelters shall, at a minimum, be able to provide the following information, [~~(~~]or have documented reasons why unobtainable,[~~)~~] regarding each client:

(a) [~~N~~]name;
(b) [~~D~~]date of birth;
(c) [~~R~~]race;
(d) [~~E~~]ethnicity;
(e) [~~G~~]gender;
(f) [~~V~~]veteran status;
(g) [~~D~~]disabling condition;
(h) [~~S~~]start date;
(i) [~~E~~]exit date;
(j) [~~D~~]destination;
(k) [~~R~~]relationship to head of household;
(l) [~~C~~]client services location;
(m) [~~P~~]prior living situation;
(n) [~~C~~]case management logs and service plans as applicable;
(o) [~~A~~]all information that could affect health safety or well-being of the client to include all medication;
(p) [~~A~~]all documentation shall be updated to include all services and contacts and shall be summarily updated at 90 day intervals;
(q) [~~A~~]all documentation shall remain in effect for re-opening for 30 days past the last shelter stay with the exception of single night stays; and
(r) [~~S~~]service plans shall emphasize self-sufficiency and identify and refer to applicable resources.

(9)[~~F.~~] Programs shall have policies and procedures for training all staff to identify and address at a minimum:

(a) Clients who pose a risk of violence;
(b) Clients in possession of contraband;
(c) Clients who are at risk for suicide;
(d) Managing clients with mental health concerns;
(e) Identifying the signs and symptoms of clients presenting under the influence of substances or alcohol[~~,~~]; and
(f) Prescribed staff responses to any of the above situations including ongoing monitoring and assessment for remaining in the program.

(10)[~~G.~~] Programs shall document a plan detailing how all program staff and client files shall be maintained and remain available to the Office and other legally authorized access for seven[~~7~~] years regardless of whether or not the program remains licensed.

(11)[~~H.~~] The program shall ensure that assessment, treatment and service planning practices are clinically appropriate, updated as needed, timely, individualized, and involve the participation of the client or guardian.

(12)[~~I.~~] All programs shall maintain documentation of all critical incidents as defined in Subsection R501-1-2[~~-~~](9) and as outlined in the DHS Critical Incident Reporting Guide.

(a)[~~1.~~] All critical incident reports shall be made to licensingconcerns@utah.gov or via the Office of Licensing Website within 24 hours.

(13)[~~2.~~] Incident reports will contain at a minimum:

(a) [~~N~~]name of provider and all involved staff, clients and witnesses;

(b) [~~D~~]date, time and location of the incident and date and time of incident discovery if different from the time of the incident[~~.~~];

(c) [~~D~~]description of the incident;
(d) [~~A~~]actions taken by program;
(e) [~~A~~]actions planned to be taken by program; and
(f) [~~P~~]program DHS contract status.[~~ (if any)~~]

R501-22-7. Physical Facility.

(1)[~~A.~~] The program shall provide written documentation of compliance with the following:

(a)[~~1.~~] [~~L~~]local zoning ordinances[~~,~~];
(b)[~~2.~~] [~~L~~]local business license requirements[~~,~~];
(c)[~~3.~~] [~~L~~]local building codes[~~,~~];
(d)[~~4.~~] [~~L~~]local fire safety regulations[~~,~~];
(e)[~~5.~~] [~~L~~]local health codes and clearance or exclusion from health clearance per Rule R392-110,
(f)[~~6.~~] [~~L~~]local approval from the appropriate government agency for new program services or increased client capacity.

[~~B. Space shall meet service needs as follows:~~]

(2)[~~1.~~] All furniture and equipment shall be maintained in a clean and safe condition.

(3)[~~2.~~] The program shall post the following documents where they are clearly visible by clients, staff, and visitors:

(a) [~~C~~]civil Rights and anti-discrimination laws;
(b) [~~P~~]program license;
(c) [~~C~~]current or pending [~~N~~]notices of [~~A~~]agency [~~A~~]action;
(d) [~~A~~]abuse and neglect reporting laws; and
(e) [~~C~~]client rights and grievance process.

(4)[~~3.~~] The program shall ensure that the physical environment is safe for clients and staff and that the appearance and cleanliness of the building and grounds are maintained.

(5)[~~4.~~] The program shall strictly adhere to and enforce all laws and rules, particularly those pertaining to the use and possession of illegal substances.

(6)[~~5.~~] Live-in staff shall each have separate living space with a private bathroom.

(7)[~~6.~~] The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

(8)[~~7.~~] Space shall be provided for private and group counseling sessions if offered on-site.

(9)[~~8. Bathrooms: The following bathroom standards shall apply.~~

~~(a)~~] There shall be separate bathrooms, including a toilet, lavatory, tub or shower, for males and females. These shall be maintained in good operating order and in a clean and safe condition.

(a)[~~(b)~~] Client to bathroom ratios shall be 10:1, except as outlined in Subsection R501-22-7[~~-~~](F)(11).

(b)[~~(c)~~] Bathrooms shall accommodate clients with physical disabilities, as required by federal, state and local law.

(c)[~~(d)~~] Each bathroom shall be maintained in good operating order and be provided with toilet paper, towels or hand dryers, and soap.

(d)[~~(c)~~] There shall be mirrors secured to the walls at convenient heights.

(e)[~~(f)~~] Bathrooms shall be placed as to allow access without disturbing other clients during sleeping hours.

(f)[~~(g)~~] Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

(g)[~~9.~~] For [~~D~~]domestic [~~V~~]violence [~~S~~]shelters and [~~E~~]emergency [~~H~~]homeless [~~S~~]shelters, family [~~bathrooms (a) Family~~] members may share a bathroom.[~~s, and~~]

(i)[~~(b)~~] Where a bathroom[~~s~~] [~~are~~]is shared by more than one family or by children over the age of eight, parents or program staff shall ensure that privacy is protected.

(h)[~~10.~~] In [~~T~~]temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters, a[~~Bathrooms~~] single occupancy unisex bathroom[~~s~~] is[~~are~~] permissible.

(i)[~~11.~~] In an [~~E~~]emergency [~~H~~]homeless [~~S~~]shelter, a group bathroom[~~s~~] that exceeds the minimum bathroom ratio[~~s~~] [~~listed above~~]set forth in Subsection R501-22-7(9)(a) are permissible if they are:

(i)[~~(a)~~] [~~A~~]approved by the local authority that determines capacity or by the Department of Health;

(ii)[~~(b)~~] [~~S~~]specifically designated for males and females in adult-only nightly shelter settings;

(iii)[~~(c)~~] [~~I~~]inspected, cleaned and re-stocked as needed and at least daily;

(iv)[~~(d)~~] [~~A~~]allow for individual privacy in bathing and toileting;

(v)[~~(e)~~] [~~A~~]at least one locking bathroom or stall is accessible for handicapped individuals; and

(vi)[~~(f)~~] [~~A~~]accommodate parents' needs for changing, toileting and bathing their children, [~~(~~]if applicable[~~)~~].

(10)[~~12.~~] Sleeping [~~A~~]accommodations, the following bedroom standards apply.[~~:~~]

(a) Except as otherwise outlined in this rule[~~:~~], [~~A~~]a minimum of 60 square feet per client shall be provided in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. Storage space shall not be counted.

(b) Emergency homeless settings shall have a policy to identify how to manage emergency overflow when capacity has been reached during extreme weather conditions.

(c)[~~13.~~] A [~~S~~]sleeping area[~~s~~] shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

(d)[~~(a)~~] Pre-existing homeless [~~sits~~]sites may be excluded from natural light and screened window requirements as long as there is mechanical ventilation and an exit plan approved by the local fire authority.

(e)[~~14.~~] Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each client's stay.

(f)[~~15.~~] The [~~P~~]program[~~s~~] shall have policies and procedures in place that allow for and encourage clients to have clean linens on at least a weekly basis.

(g)[~~(a)~~] An emergency homeless [~~P~~]program[~~s~~] serving [~~short term emergency populations of~~]those experiencing homelessness may have portable beds, cots or mats as a means to accommodate the fluctuating client volume.

(h)[~~(b)~~] Clean bedding shall be provided as needed and shall be laundered at least weekly.

(i)[~~16.~~] Sleeping quarters serving male and female clients shall be structurally separated except in family shelters serving populations experiencing homelessness, in which case families may be permitted to share bedroom space with rules outlined by the program per Subsection R501-22-7[~~-~~](13[~~A~~])[~~-20~~](d) and in dormitory settings allowed by this rule.

(j)[~~17.~~] A [~~C~~]client[~~s~~] shall be allowed to decorate and personalize bedrooms with respect for other clients and property unless agency policy and procedures transparently outline otherwise.

(11)[~~18.~~] [~~For~~]Bedroom space standards shall apply for [~~D~~]domestic [~~V~~]violence [~~S~~]shelters, [~~F~~]family [~~S~~]support [~~C~~]centers, [~~T~~]temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters, [~~E~~]emergency [~~H~~]homeless [~~F~~]family [~~S~~]shelters and children's shelters.[~~, the following shall apply to bedroom spaces:~~]

(a) A minimum of 40 square feet per client shall be provided in a multiple occupant bedroom. Storage space shall not be counted. The use of one crib for children under two years of age shall not be counted in the square foot requirement as long as it does not inhibit access to and from the room.

(b) Roll away and hide-a-beds may be used as long as the client square foot requirement is maintained.

(c) Family members are allowed to share bedrooms. Where bedrooms are shared by more than one family, parents or program staff shall make appropriate arrangements to ensure privacy is protected.

(12)[~~19.~~] For [~~T~~]temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters, the following shall apply.[~~:~~]

(a) A minimum of 40 square feet per client shall be provided in a multiple occupant dormitory style bedroom. Storage space shall not be counted.

(b) For youth with their own children, a minimum of 40 square feet per person shall be provided in a separately enclosed bedroom that houses only youth that have their own children. Storage space shall not be counted.

(13)[~~20.~~] For [~~E~~]emergency [~~H~~]homeless and temporary homeless youth shelters and receiving center the following shall apply.[~~:~~]

(a) Dormitory style bedrooms are permitted with square footage and capacity determinations made by the local fire authority to include any staff present in the facility.

(b) If the local fire authority does not identify capacity, Licensing square footage requirements [~~apply to capacity determinations~~]apply to determine capacity.

(c) The program shall have a policy to identify how to manage overflow when capacity has been reached.

(14)[~~(d)~~] The program shall outline policies and procedures regarding:

(a)[~~(i)~~] rules and guidelines for families or mixed genders sharing the same dormitory space or bedrooms, including boundaries and separation of unrelated residents;

(b)[~~(ii)~~] securing personal belongings;

(c)[~~(iii)~~] supervision responsibility for own children;

(d)[~~(iv)~~] conflict resolution[~~/~~] or nuisance and disruptive behavior[~~s~~];

(e)[~~(v)~~] housekeeping responsibilities;

(f)[~~(vi)~~] daily schedules;

(g)[~~(vii)~~] prohibited items and search policy;

(h)[~~(viii)~~] medication policy[~~ies~~] to include,[~~:~~] lawful storage, staff and client responsibilities and administration policy

(15) A receiving center with multiple license types will ensure that policies and procedures, staffing ratios where appropriate and staff training is commensurate with the highest level of license type and spans all populations if staff are shared between settings.

(a) A receiving center will outline in policy and procedure and consumer agreements how separation of populations under each

license will be maintained and under which circumstances interactions between populations will be permitted.

[~~21. Equipment~~]

(16)[~~(a)~~] Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and client need[~~s~~].

(a)[~~(b)~~] All furniture and equipment shall be maintained in a clean and safe condition.

[~~22. Storage~~]

(17)[~~(a)~~] The program shall have locked storage for medications and shall adhere to medication policies regarding locked storage, staff and client responsibilities and administration of medications.

(a)[~~(b)~~] The program shall maintain potentially hazardous items on-site lawfully, responsibly and with consideration of the safety and risk level of the population[~~(s)~~] served.

(18)[~~(c)~~] The program shall have a weapons policy that identifies that when weapons are brought into the facility, those weapons shall be secured by the program in a locked storage area or removed from the premises.

[~~23. Laundry Service~~]

(19)[~~(a)~~] Programs which permit clients to do their own laundry shall provide equipment and supplies for washing and drying[~~,~~]

(a)[~~(b)~~] A [~~P~~]program[~~s~~] which provide for common laundry of linen[~~s~~] and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing unless otherwise outlined in the program policy and procedure manual. Programs that require clients to provide their own laundry supplies and locate a laundromat for laundering, will have a policy to assist clients on a limited basis when they are unable to provide these services for themselves.

(b)[~~(c)~~] Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

R501-22-8. Food Service.

(1)[~~A.~~] [~~One~~] [~~s~~]Staff shall be responsible for food service when the program provides meals for clients.

(a)[~~1.~~] Meals shall be served from dietician approved menus or in accordance with USDA standard for Homeless settings.

(2)[~~2.~~] In self-serve programs, one staff member shall be trained by Serv-Safe, USDA, Dept. of Health Food Handler's permit or a comparable program to oversee kitchen use and redirect and train kitchen users as needed.

(a) The staff responsible for food service shall maintain a current list of clients with special nutritional needs and record in client records all information relating to special nutritional needs and provide for nutritional counseling to staff and clients where indicated.

(b) In self-serve programs, the staff responsible for food service shall ensure that all clients with special nutritional needs have food storage and preparation areas that are not exposed to any identified allergens or contaminants.

(3)[~~3.~~] Programs are permitted to establish policies and procedures requiring adult clients to maintain full responsibility for their, [~~(~~]and their childrens',[~~)~~] special dietary need[~~s~~] as long as the client[~~s~~] signs off on this responsibility prior to entering the program.

(4)[~~4.~~] The program shall establish and post kitchen rules and privileges in communal kitchen and dining space according to client needs and safe food handling practices.

(5)[~~5.~~] Homeless settings may create policies regarding meals and snacks according to established practices, USDA guidelines incoming food donations and volunteer scheduling.

(6)[~~(a)~~] Adequate dining space shall be provided for all clients and shall be maintained in a clean and safe condition.

(7)[~~(b)~~] When meals are prepared by clients, there shall be a written policy to include the following:

(a)[~~(i)~~] sanitation requirements; and

(b)[~~(ii)~~] shopping and storage responsibilities.

R501-22-9. Specialized Services for Substance Use Disorders.

(1) The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma or unconscious.

(2)[~~A.~~] All homeless shelters and other programs potentially serving substance use disorder clients shall provide evidence of ongoing coordination with the local health authorities regarding managing communicable diseases within the licensed setting to include that staff are informed regarding:

(a)[~~1.~~] [~~T~~]types of communicable diseases;

(b)[~~2.~~] [~~R~~]recognizing signs and symptoms;

(c)[~~3.~~] [~~S~~]steps to take when a potential disease is identified or outbreak occurs[~~.~~]; and

(d)[~~4.~~] [~~S~~]screening staff and clients for risk of tuberculosis.

(2)[~~B.~~] All [~~H~~]homeless shelters and other programs potentially interacting with opioid users shall have at least one opioid overdose reversal kit onsite with on duty staff trained to utilize it as needed.

(3)[~~C.~~] A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually.

R501-22-10. Specialized Services for Programs Serving Children.

(1)[~~A.~~] The program shall provide clean and safe age appropriate toys for children.

(2)[~~B.~~] The program shall provide an outdoor play area enclosed with a five foot safety fence or enclosure as otherwise required by local ordinances.

(3)[~~C.~~] Only custodial parents, legal guardian, or persons designated in writing are allowed to remove any child from the program.

(4)[~~D.~~] The program shall provide adequate staff to supervise children at all times or be available to monitor parents supervising their own children.

(5)[~~E.~~] The program shall comply as required with the Interstate Compact on the Placement of Children (ICPC), including ensuring the disruption plan is followed when a minor presents at a shelter as a result of a failed ICPC placement in a Utah residential setting.

(6)[~~F.~~] The Program shall comply with Subsection 62A-2-108[~~-~~](1) when sending education entitled children to the school within the [~~D~~]district where the program is located to include:

(a)[~~1.~~] [~~R~~]required contents of educational service plans; and

(b)[~~2.~~] [~~O~~]ongoing compliance with educational service plans.

R501-22-11. Specialized Services for Domestic Violence Shelters.

(1)[~~A.~~] The program shall provide and document the following information both verbally and in writing to the client: Shelter rules, reason for termination, and confidentiality issues.

(2)[~~B.~~] Parents are responsible for supervising their children while at the shelter. If parents are required to be away from the shelter or involved in shelter activities without their children, they shall arrange for appropriate child care services.

(3)[~~C.~~] Domestic [~~V~~]violence [~~S~~]shelter action plans shall include the following:

(a)[~~1.~~] [~~A~~]a review of danger and lethality with victim and discussion of the level of the victim's risk of safety[~~.~~];

(b)[~~2.~~] [~~A~~]a review of safety plan with the victim[~~,~~];

(c)[~~3.~~] [~~A~~]a review of the procedure for a protective order and referral to appropriate agency or clerk of the court authorized to issue the protective order[~~,~~]; and

(d)[~~4.~~] [~~A~~]a review of supportive services to include, but not limited to medical, self-sufficiency, day care, legal, financial, and housing assistance.

(4) The program shall facilitate connecting services to those resources as requested. Appropriate referrals shall be made, when indicated, and documented in the client record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied services.

(5)[~~5.~~] Domestic [~~V~~]violence [~~S~~]shelter staff completing action plans shall at a minimum be supervised by an experienced and trained Domestic Violence provider.

R501-22-12. Specialized Services for Temporary Homeless Youth Shelters.

(1)[~~A.~~] Temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters shall provide a staff ratio of no less than one direct care staff to ten youth.

(2)[~~B.~~] [~~The age of the y~~]Youth [~~to be~~]admitted shall be [~~between 12 years of age and 17 years of age.~~]under the age of 18.

(a) Youth may be admitted with their own biological children of any age.

(3) Temporary Homeless Youth Shelters may provide shelter to individuals 18 through 20 year old clients under the following conditions:

(a) each 18 through 20 year old is placed in age and gender appropriate sleeping quarters outside of the minor population;

(b) each 18 through 20 year old remains in the program voluntarily and is made aware of program rules and the repercussions of criminal behavior as an adult

(c) 1:10 ratio is maintained

(4)[~~C.~~] Youth and 18-20 year old clients shall be assessed by facility staff who meet the qualifications of a mental health therapist as defined in Section 58-60-102, to determine whether they are an imminent risk of harming themselves or others. Youth who are assessed as an imminent risk shall be referred to programs qualified to serve them.

(a) Individualized documentation shall be maintained outlining risk of harm and justification statement for all clients being served in the youth setting.

(5)[~~D.~~] Temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters shall comply with Subs[~~S~~]ection 62A-4a-501 regarding mandatory notifications.

(6)[~~E.~~] Temporary [~~H~~]homeless [~~Y~~]youth [~~S~~]shelters shall comply with Subs[~~S~~]ection 62A-2-108.1 to coordinate educational requirements for all youth admitted.

(7) Temporary homeless youth shelters shall maintain responsibility for coordinating and transitioning youth and 18 through 20 year old clients to more appropriate settings when they are unable to remain in the Youth setting.

R501-22-13. Specialized Services for Emergency Homeless Shelters.

(1)[~~A.~~] Emergency [~~H~~]homeless [~~S~~]shelters shall adhere to a ratio of no less than 2 direct care staff present or available to clients at all times. A ratio of 1:40 shall be maintained during weekday daytime hours with ratios increased but not decreased as the dynamics of the population dictate.

(2)[~~B.~~] This staffing and capacity ratio can be exceeded during extreme weather, on weekends and during sleeping hours in emergency homeless settings if:

(a)[~~1.~~] [~~T~~]there is an identified and utilized chain of command for on-call availability[~~, and~~];

(b)[~~2.~~] [~~T~~]the program has a surveillance camera system[~~, or~~]; or

(c)[~~3.~~] [~~T~~]the program has an emergency radio onsite and all staff on-duty are trained regarding how and when it is to be used[~~, or~~]; or

(d)[~~4.~~] The program identifies and can rely upon other means of back up support in the event of an emergency[~~;~~].

(3) Emergency homeless shelters shall require all adult residents to sign an agreement form at admission which outlines that visitors are allowed on premises to assist with housing, food stamps, assessments, religious, social and other client-specific needs. The agreement outlines that participation in any meetings or groups with these visitors is strictly voluntary. The client's signature on the form and voluntary participation in the visitation constitutes the client's invitation to these visitors in the DHS licensed setting. Clients who have not signed the agreement shall not participate in any voluntary services offered onsite.

(a) Staff in the homeless settings may not be considered visitors.

R501-22-14. Specialized Services for Programs serving clients of the Division of Services for People with Disabilities.

(1)[~~A.~~] In accordance with the Federal Home and Community Based Services (HCBS)Settings Final Rule, programs serving HCBS Waiver clients shall complete and adhere to the characteristics of a compliant setting outlined in the Residential Attestation Agreement form and Self Assessment Survey for each licensed site[~~program~~].

(a)[~~1.~~] Residential Attestation Agreement forms can be found here http://health.utah.gov/ltc/hcbstransition/Files/Residential_Attestion.pdf

(b)[~~2.~~] Copies of this form shall be located in program documentation and updated as needed.

(c)[~~3.~~] In the event of a conflict between Licensing rule and Settings rule, the Settings rule shall prevail.

(d)[~~4.~~] Any violations of the Settings rule noted by the [~~O~~]office [~~of Licensing~~]shall be reported to the Office of Quality Design for contract consideration. After 2022, violations of [~~S~~]settings rule will constitute a violation of federal law.

R501-22-15. Compliance.

(1) Programs operating within the scope of this rule at the time it is made effective shall have 60 days to come into compliance with this rule.

KEY: human services, licensing
Date of Enactment or Last Substantive Amendment: [~~January 16,~~]2020
Notice of Continuation: April 1, 2015
Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R539-1**	**Filing No. 52519**

Agency Information

1. Department:	Human Services
Agency:	Services for People with Disabilities
Building:	MASOB
Street address:	195 N 1950 W
City, state:	Salt Lake City, UT 84116
Mailing address:	195 N 1950 W
City, state, zip:	Salt Lake City, UT 84116
Contact person(s):	

Name:	**Phone:**	**Email:**
Amy Huppi	801-538-4154	amyhuppi@utah.gov
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Non-Waiver Services for People with Intellectual Disabilities or Related Conditions

3. Purpose of the new rule or reason for the change:

The Division of Services for People with Disabilities (Division) is replacing the Inventory for Client and Agency Planning (ICAP) with a new assessment of functional limitations and need.

4. Summary of the new rule or change:

The ICAP language is removed from the rule, and replaced with broader language indicating that the Division will use an assessment that determines functional limitations and need.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Through this amendment, there is an anticpated cost savings of approximately $4,500 annually. During the previous fiscal year, the Division spent $4,548.28 on ICAP materials.

B) Local governments:

There is no anticipated impact. Local goverments do not participate in the purchase of ICAP materials.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no anticipated impact. Small businesses do not participate in the purchase of ICAP materials.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There is no aniticpated impact, as non-small businesses do not participate in the purchase of ICAP materials.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Persons other than small businesses, non-small businesses, state, or local government entities will not see a cost or benefit, as they do not participate in the purchase of ICAP materials.

F) Compliance costs for affected persons:

The Division does not charge for an ICAP assessment, and will not charge for the new assessment. This amendment will not result in compliance costs for affected parties.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$4,548.28	$4,548.28	$4,548.28

Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$4,548.28**	**$4,548.28**	**$4,548.28**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule change will not result in a significant fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-5-103	Section 62A-5-105	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ann Williamson, Executive Director	**Date:**	02/04/2020

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) a procedure[~~s~~] and standard[~~s~~] for the determination of eligibility for d[~~D~~]ivision services as required by Section 62A-5-1[~~Title 62A, Chapter 5, Part 1~~]; and

(b) notice to an a[~~A~~]pplicant[~~s~~] of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes a procedure[~~s~~] and standard[~~s~~] for the determination of eligibility for any d[~~D~~]ivision service[~~s~~] as required by Section 62A-5-1[~~Title 62A, Chapter 5, Part 1~~].

(2) [~~The procedures of t~~]This rule constitutes the minimum requirement[~~s~~] for eligibility for [~~D~~]division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

[~~(2) In addition:~~

]([~~a~~]2) "Agency Action" means an action taken by the [~~D~~]division that denies, defers, or changes a service[~~s~~] to an [~~A~~]applicant applying for, or a person receiving, [~~D~~]division funding[~~;~~].

([~~b~~]3) "Applicant" means a person[~~n individual~~] or a representative of a person[~~n individual~~] applying for determination of eligibility[~~;~~].

([~~c~~]4) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as [~~M~~]multiple [~~S~~]sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident[~~;~~].

([~~d~~]5) "Department" means the Department of Human Services[~~;~~].

([~~e~~]6) "Division" means the Division of Services for People with Disabilities[~~;~~].

([~~f~~]7) "Electronic Surveillance" is the real time observation[~~ing~~] or listening to a person[~~s~~], place[~~s~~], or activity[~~ies~~] with the aid of an electronic device[~~s~~] such as a camera[~~s~~], web cam[~~s~~], global positioning system[~~s~~], motion detector[~~s~~], weight detector[~~s~~] or microphone[~~s, in real time~~].

([~~g~~]8) "Electronic Surveillance Certification" [~~is~~]means documentation signed by members of the Provider Human Rights Committee that contains the following information as required by Subsections R539-3-7(3) and R539-3-7(4):

(a) the location of the site under surveillance[~~,~~];

(b) a description of the type[~~s~~] of surveillance to be used[~~,~~];

(c) the name[~~s~~] of each person[~~s to be~~] under surveillance; and

(d) a signed consent from each person affected[~~ as required by Subsections R539-3-7(3) and R539-3-7(4)~~].

([~~h~~]9) "Form" means a standard document required by [~~D~~]division rule or other applicable law[~~;~~].

([~~i~~]10) "Guardian" means an individual[~~someone~~] appointed by a court to be a substitute decision maker for a person deemed to be incompetent [~~of~~] to make[~~ing~~] an informed decision[~~s~~] [~~;~~].

([~~j~~]11) "Hearing Request" means a written request made by a person [~~or a person's representative~~] for a hearing concerning a denial, deferral or change in service[~~;~~].

([~~k~~]12) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability[~~;~~].

([~~l~~]13) "Person" means an individual[~~someone~~] who has been found eligible for [~~D~~]division funding for a support service[~~s~~] due to a disability and who is waiting for or receiving a service[~~s~~] at the present time[~~;~~].

([~~m~~]14) "Qualifying Acquired Neurological Brain Injury" means an eligible diagnosis from the International Classification of Diseases, Tenth Revision[~~code diagnosis from the most recent revision of the classification~~], [~~c~~]Clinical [~~m~~]Modification (ICD-10-CM), as outlined in [~~D~~]division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses, incorporated by reference.

([~~n~~]15) "Related Conditions" means a severe, chronic disability that meets the following conditions:

([~~i~~]16) It is attributable to:

([~~A~~]a) [~~C~~]cerebral palsy or epilepsy; or

([~~B~~]b) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

([~~o~~]17) "Representative" means the person's legal representative including the person's parent[~~s~~] if the person is a minor child, a court appointed guardian or a lawyer retained by the person[~~;~~].

([~~p~~]18) "Resident" is an [~~A~~]applicant or [~~G~~]guardian who is physically present in Utah and provides a statement of intent to reside in Utah.[~~;~~]

([~~q~~]19) "Support" is assistance for the portion[~~s~~] of a task that allows[~~ing~~] a person to independently complete any other portion[~~s~~] of the task or to assume increasingly greater responsibility for performing the task independently[~~;~~].

([~~r~~]20) "Support Coordinator" is an employee of the [~~D~~]division or an individual contracted with the [~~D~~]division to provide assistance in assessing the needs of, and developing services and supports for, a person[~~s~~] receiving [~~D~~]division funding. A [~~S~~]support [~~C~~]coordinator[~~s~~] completes written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitors the quality of [~~the~~] each service[~~s~~] provided.

([~~s~~]21) "Team Member" means any member[~~s~~] of the person's circle of support who participates in the planning and delivery of services and supports with the [~~P~~]person. A [~~T~~]team member[~~s~~] may include the [~~P~~]person applying for or receiving services, [~~his or her~~] their parent[~~s~~], [~~G~~]guardian, the support coordinator, friend[~~s~~] of the [~~P~~]person, and any other professional[~~s~~] and [~~P~~]provider staff working with the [~~P~~]person[~~; and~~].

([~~t~~]22) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to a person[~~s~~] with a disability[~~ies in lieu~~] instead of institutionalization in a Title XIX facility, the [~~D~~]division administers three [~~such~~]waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver, and the physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The [~~D~~]division will serve [~~those A~~]an applicant[~~s~~] who meets the definition of a person with a disability in Subsection[~~s~~] 62A-5-101(9)[~~(8)~~].

(2) When determining functional limitations in the areas listed below for an a[~~A~~]pplicant[~~s~~] aged[~~s 7 and~~] seven years or older, age appropriate abilities [~~must~~] shall be considered.

[~~(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.~~

~~(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.~~

~~(c) Learning - An Applicant who has a valid diagnosis of Intellectual Disability based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).~~

~~(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.~~

~~(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.~~

~~(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.~~

~~(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.~~]

(a) "Self-care" means an applicant who requires assistance, training or supervision with eating, dressing, grooming, bathing or toileting.

(b) "Expressive and receptive language" means an applicant who:

(i) lacks functional communication skills;

(ii) requires the use of assistive devices to communicate;

(iii) does not demonstrate an understanding of requests; or

(iv) is unable to follow two-step instructions.

(c) "Learning" means an applicant who has a valid diagnosis of intellectual disability based on the criteria found in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), incorporated by reference.

(d) "Mobility" means an applicant who requires the use of assistive devices for mobility and who cannot self-evacuate from a building during an emergency without the assistive device.

(e) "Capacity for Independent Living" means:

(i) a minor applicant, at least seven years of age, who is unable to locate and use a telephone; cross streets safely; or understand that it is not safe to accept rides, food, or money from strangers; or

(ii) an adult applicant who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) "Self-direction" means:

(i) a minor applicant, at least seven years of age, who is significantly at risk in making age appropriate decisions;

(ii) an adult applicant who is unable to provide informed consent for medical care, personal safety, legal, financial, habilitative, or residential issues; or who has been declared legally incompetent; or

(iii) an applicant who is a significant danger to self or others without supervision.

(g) "Economic self-sufficiency" means an adult applicant who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability or related condition as set forth in Subsection 62A-5-101(9)[~~(8)~~].

(a) An applicant[~~s who have~~] with a primary diagnosis of mental illness, hearing impairment [~~and/~~]or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The [~~A~~]applicant, parent of a minor child, or the [~~A~~]applicant's [~~G~~]guardian must be a resident of the State of Utah prior to the [~~D~~]division's final determination of eligibility.

(5) The [~~A~~]applicant [~~or Applicant's Representative~~]shall be provided with information about [~~all~~]each service option[~~s~~] available through the [~~D~~]division as well as a copy of the Division's Guide to Services.

(6) It is the [~~A~~]applicant's [~~or Applicant's Representative's~~]responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children [~~under~~]younger than seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the [~~D~~]division office, will be accepted [~~in lieu~~]instead of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) [~~Inventory for Client and Agency Planning (ICAP)~~]An assessment of functional limitation and need shall be completed by the [~~D~~]division[~~;~~].

(c) Social History completed by or for the [~~A~~]applicant within one year of the date of application[~~;~~].

(d) Psychological [~~E~~]evaluation provided by the [~~A~~]applicant or, for a child[~~ren under~~] younger than seven years of age, a [~~D~~]developmental [~~A~~]assessment may be used as an alternative[~~; and~~].

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in [~~A~~]applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the [~~above-required~~]eligibility documentation. Examples of supporting documentation include[~~, but are not limited to,~~] mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the [~~A~~]applicant [~~or Applicant's Representative~~] indicating that the intake case will be placed in inactive status.

(a) The [~~A~~]applicant [~~or Applicant's Representative~~]may activate the application at anytime [~~thereafter~~] by providing the remaining required information.

(b) The [~~A~~]applicant [~~or Applicant's Representative~~]shall be required to update information.

(9) When all necessary eligibility documentation is received from the [~~A~~]applicant[~~ or Applicant's Representative~~], [~~D~~]division staff shall determine the [~~A~~]applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each [~~A~~]applicant [~~or Applicant's Representative~~]upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the [~~A~~]applicant [~~or Applicant's Representative~~]of eligibility determination and placement on the waiting list. The [~~A~~]applicant [~~or Applicant's Representative~~]may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) Each person[~~People~~] receiving a service[~~s~~] shall[~~will~~] have their eligibility re-determined on an annual basis. If [~~people are~~]a person is determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This section does not apply to an [~~A~~]applicant[~~s~~] who meets the separate eligibility criteria for physical disability and brain injury [~~outlined~~]as described in S[~~ubs~~]ections R539-1-6 and R539-1-8, respectively.

(13) Any [~~P~~]person[~~s~~] not participating in a [~~W~~]waiver or any [~~P~~]person[~~s~~] participating in a [~~W~~]waiver but receiving a non-[~~W~~]waiver service[~~s~~] may have reductions in non-[~~W~~]waiver service packages or be discharged from non-[~~W~~]waiver services completely, due to a budget shortfall[~~s~~], reduced legislative allocation[~~s~~] [~~and/~~]or a reevaluation[~~s~~] of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for [~~People~~]a person with an [~~I~~]intellectual [~~Disabilities~~]disability or [~~R~~]related [~~C~~]condition[~~s~~] to provide an array of home and community-based services that an eligible person may need[~~s~~].

(2) Within appropriations from the Legislature, as described in[~~set forth by UT Code~~] Subsections 62A-5-102(3) and (4), a person[~~s~~] may be found eligible for [~~W~~]waiver funding according to the following methods:

(a) A person's needs score, as determined by the [~~D~~]division's need[~~s~~] assessment tool, identifies the person as ranking among each other person[~~s~~] with the most critical need[~~s~~].

(b) A person is identified by the [~~D~~]division as a person whose only need is respite services.

(i) The [~~D~~]division determines that a person only needs respite services by:

(A) [~~I~~]identifying [~~those~~]each person[~~s~~] who, according to the [~~D~~]division's records, have indicated that the person [~~is in need of~~]only needs respite services[~~, only~~]; and

(B) [~~C~~]conducting an additional needs assessment to update the person's need[~~s~~] score and determine if the person [~~is in need of~~]needs additional services beyond respite.

(ii) Each [~~P~~]person[~~s~~] identified by the [~~D~~]division as needing only respite services will be grouped together.[~~, from which~~] T[~~t~~]he [~~D~~]division shall randomly select each person[~~s,~~] using a simple random sampling method.

(3) Pursuant to Section R414-510, [~~where~~]when the Department of Health determines that sufficient funds are available, an eligible individual [~~person meeting the eligibility requirements set forth by the Department of Health in Subsection R414-510-3~~] may receive [~~Medicaid Home and Community-Based W~~]waiver [~~S~~]services by transitioning out of an ICF/ID into the Community Supports Waiver for [~~People~~]a person with an [~~I~~]intellectual [~~Disabilities~~]disability or [~~R~~]related [~~C~~]condition[~~s~~].

(4) Pursuant to Section R414-502, [~~where~~]when the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid [~~H~~]home and [~~C~~]community-[~~B~~]based [~~W~~]waiver program, a person may be found eligible for funding through the Community Supports Waiver for [~~People~~]a person with an [~~I~~]intellectual [~~Disabilities~~]disability or [~~R~~]related [~~C~~]condition[~~s~~] when all other eligibility requirements of Section R414-502 are met.

(5) Any [P]person[~~s who are~~] found eligible for funds through the waiver[~~Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions~~] may choose not to participate in the [~~W~~]waiver. A [~~P~~]person[~~s~~] who chooses not to participate in the [~~W~~]waiver will receive only the state funded portion of the budget the person would have received had the person participated in the [~~W~~]waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The [~~D~~]division will serve [~~those~~]an [~~A~~]applicant[~~s~~] who meets the eligibility requirements for physical disabilities services. To be determined eligible for a non-waivered [~~P~~]physical [~~D~~]disability[ies] [~~S~~]service[~~s~~], the [~~A~~]applicant must:

(a) [~~H~~]have the functional loss of two or more limbs;

(b) [~~B~~]be 18 years of age or older;

(c) [~~H~~]have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment [~~(if any)~~] needed to adequately and safely care for the [~~P~~]person;[~~ and~~]

(d) [~~B~~]be medically stable and have a physical disability[~~.~~];

(e) Have their physician document that the [~~P~~]person's qualifying disability and need for a personal assistance service[~~s~~] are attested to by a medically determinable physical impairment [~~which~~]that the physician expects will last for a continuous period of not less than 12 months and [~~which~~]that has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living[~~/~~] and instrumental activities of daily living;

(f) [~~B~~]be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) [~~B~~]be capable of managing personal financial and legal affairs; and

(h) [~~B~~]be a resident of the state[~~State of Utah~~].

(2) An [~~A~~]applicant[~~s~~] seeking non-[~~W~~]waiver funding for a physical disability[~~ies~~] service[~~s~~] from the [~~D~~]division shall apply directly to the [~~D~~]division[~~'s State Office~~], by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the [~~A~~]applicant indicating that the intake case will be placed in inactive status.

(a) The [~~A~~]applicant may activate the application at any time [~~thereafter~~]by providing the remaining required information.

(b) The [~~A~~]applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the [~~A~~]applicant and the [~~A~~]applicant is determined eligible, the [~~A~~]applicant will be assessed by a [~~N~~]nurse [~~C~~]coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing the [~~a P~~]person into services. The [~~P~~]physical [~~D~~]disabilities [~~N~~]nurse [~~C~~]coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each [~~P~~]person's level of need;

(b) determine and prioritize a need[~~s~~] score[~~s~~];

(c) rank order the need[~~s~~] score[~~s~~] for [~~every~~]each [~~P~~]person eligible for service[~~,~~]; and

(d) if funding is unavailable, enter the [~~P~~]person's name and score on the [~~P~~]physical [~~D~~]disability[~~ies~~] wait list.

(5) The [~~P~~]physical [~~D~~]disabilities [~~N~~]nurse [~~C~~]coordinator shall assure[~~s~~] that the need[~~s~~] assessment score and ranking remain current by updating the need[~~s~~] assessment score as necessary. A [~~P~~]person's ranking may change as needs assessments are completed for each new [~~A~~]applicant[~~s~~] found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each [~~A~~]applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the [~~A~~]applicant of eligibility determination and placement on the pending list. The [~~A~~]applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to an [~~A~~]applicant[~~s~~] who meets the separate eligibility criteria for intellectual disability or related condition and brain injury [~~outlined~~]as described in S[~~ubs~~]ections R539-1-4 and R539-1-8 respectively.

(8) Any [~~P~~]person[~~s~~] not participating in a waiver or any [~~P~~]person[~~s~~] participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to a budget shortfall[~~s~~], reduced legislative allocation[~~s~~] [~~and/~~]or a reevaluation[~~s~~] of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funding[s] may be available through the Medicaid [H]home and [C]community-[B]based [W]waiver for a person[People] with a [P]physical [D]disability[ies] to provide an array of home and community-based services that an eligible person may need[s].

(2) Within appropriations from the Legislature, as described in[set forth by UT Code] Subsections 62A-5-102(3) and (4), a person[s] with physical disability[ies] may be found eligible for [W]waiver funding according to the following methods:

(a) A person's need[s] score, as determined by the [D]division's need[s] assessment tool, identifies the person as ranking among each other person[s] with the most critical need[s].

(b) A person who is eligible for waiver service through the Medicaid [H]home and [C]community-[B]based [W]waiver for a person[People] with a physical [D]disability[ies] is not eligible for a respite service[s].

(3) Pursuant to Section R414-502, [where]when the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid [H]home and [C]community-[B]based [W]waiver program, an applicant may be found eligible for funding through the Medicaid [H]home and [C]community-[B]based [W]waiver for a person[People] with a [P]physical [D]disability[ies] when all other eligibility requirements of Section R414-502 are met.

(4) A [P]person[s] who [are]is found eligible for funds through the Medicaid [H]home and [C]community-[B]based [W]waiver for a person[People] with a [P]physical [D]disability[ies] may choose not to participate in the [W]waiver. A [P]person[s] who chooses not to participate in the [W]waiver will receive only the state funded portion of the budget the person would have received had the person participated in the [W]waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The [D]division will serve [those] an [A]applicant[s] who meets the eligibility requirements for brain injury services. To be determined eligible for a non-waiver brain injury service[s] the [A]applicant must:

(a) have a documented qualifying acquired neurological brain injury from a licensed physician [(MD or DO).];

(b) [B]be 18 years of age or older;

(c) score between [(]36 and 136[)] on the Comprehensive Brain Injury Assessment Form 4-1[.]; and

(d) meet at least three of the functional limitations listed under [number (4)]Subsection R539-1-8(4).

(2) An [A]applicant[s] with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like [M]multiple [S]sclerosis, [M]muscular [D]dystrophy, Huntington's [C]chorea, [A]ataxia or [C]cancer are ineligible for non-waiver services.

(3) An [A]applicant[s] with intellectual disability or related conditions are ineligible for [these]a non-waiver brain injury service[s].

(4) In addition to the definitions in Section 62A-5-101[(2) and (8)], eligibility for brain injury services will be evaluated according to the [A]applicant's functional limitations as described in the following definitions:

(a) "Memory" or "Cognition" means the [A]applicant's brain injury resulted in a substantial problem[s] with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) "Activities of Daily Life" means the [A]applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) "Judgment" and "Self-protection" means the [A]applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare; or

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) "Control of Emotion" means the [A]applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) "Communication" means the [A]applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) "Physical Health" means the [A]applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) "Employment" means the [A]applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The [A]applicant shall be provided with information concerning service options available through the [D]division and a copy of the Division's Guide to Services.

(6) The [A]applicant [or the Applicant's Guardian]must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the [A]applicant's [or Applicant's Representative's]responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician[;].

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Sections A through L; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination[;].

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the [A]applicant [or the Applicant's Representative]indicating that the intake case will be placed in inactive status.

(a) The [A]applicant [or Applicant's Representative]may activate the application at any time [thereafter] by providing the remaining required information.

(b) The [A]applicant [or Applicant's Representative]shall be required to update information.

(10) When all necessary eligibility documentation is received from the [A]applicant[or Applicant's Representative], [D]division staff shall determine the [A]applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each [A]applicant [or Applicant's Representative]upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the [A]applicant [or Applicant's Representative]of eligibility determination and placement on the waiting list. The [A]applicant [or Applicant's Representative]may challenge the Notice of Agency Action by filing a written request for an administrative

hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Each [~~P~~]person[~~s~~] receiving a [~~B~~]brain [~~I~~]injury service[~~s~~] will have their eligibility re-determined on an annual basis. A [~~P~~]person[~~s who are~~] determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid [~~H~~]home and [~~C~~]community-[~~B~~]based [~~W~~]waiver for a person[~~People~~] with an [~~A~~]acquired [~~B~~]brain [~~I~~]injury to provide an array of home and community-based services that an eligible person may need[~~s~~].

(2) Within appropriations from the Legislature, as described in[~~set forth by UT Code~~] Subsections 62A-5-102(3) and (4), a person[~~s~~] may be found eligible for [~~W~~]waiver funding according to the following methods:

(a) A person's needs score, as determined by the [~~D~~]division's need[~~s~~] assessment tool, identifies the person as ranking among each other person[~~s~~] with the most critical need[~~s~~].

(b) A person is identified by the [~~D~~]division as a person whose only need is respite services.

(i) The [~~D~~]division determines that a person only needs respite services by:

(A) [~~I~~]identifying [~~those~~]each person[~~s~~] who, according to the [~~D~~]division's records, have indicated that the person is in need of respite services only; and

(B) [~~C~~]conducting an additional needs assessment to update the person's need[~~s~~] score and determine if the person [~~is in need of~~]needs any additional service[~~s~~] beyond respite.

(ii) Any [~~P~~]person[~~s~~] identified by the [~~D~~]division as needing only respite services will be grouped together.[~~, from which~~] T[~~t~~]he [~~D~~]division shall randomly select each person[~~s,~~] using a simple random sampling method.

(3) Pursuant to Section R414-502, [~~where~~]when the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid [~~H~~]home and [~~C~~]community-[~~B~~]based [~~W~~]waiver program, an applicant may be found eligible for funding through the Medicaid [~~H~~]home and [~~C~~]community-[~~B~~]based [~~W~~]waiver for a person[~~People~~] with an [~~A~~]acquired [~~B~~]brain [~~I~~]injury when all other eligibility requirements of Section R414-502 are met.

(4) Any [~~P~~]person[~~s~~] who [~~are~~]is found eligible for funds through the Medicaid [~~H~~]home and [~~C~~]community-[~~B~~]based [~~W~~]waiver for a person[~~People~~] with an [~~A~~]acquired [~~B~~]brain [~~I~~]injury may choose not to participate in the [~~W~~]waiver. Any [~~P~~]person[~~s~~] who chooses not to participate in the [~~W~~]waiver will receive only the state funded portion of the budget the person would have received had the person participated in the [~~W~~]waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Subsections 62A-5-105(2)(b) and(c) the [~~D~~]division establishes a graduated fee schedule for use in assessing fees to [~~individuals~~]a person. The graduated fee schedule shall be applied to a [~~P~~]person[~~s~~] who does not meet the Medicaid eligibility requirements for [~~W~~]waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to a [~~P~~]person[~~s~~] who qualifies[~~y~~] for Medicaid waiver funding but who choose to have funding reduced to the state match [~~per~~]as described in Subsections R539-1-5(5), R539-1-7(4), and R539-1-9(4) rather than participate in the Medicaid [~~W~~]waiver.

(a) A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver who does not meet [~~W~~]waiver level of care must apply for a Medicaid [~~C~~]card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid [~~W~~]waiver who meet [~~W~~]waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver shall provide the [~~S~~]support [~~C~~]coordinator or [~~N~~]nurse [~~C~~]coordinator with the financial determination letter within 10 days of the receipt of such documentation. A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver and who fails to comply with these requirements shall have funding reduced to the state match rate.

(b) A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver due to financial eligibility, must be reduced to the state match rate.

(c) A [~~P~~]person[~~s~~] who only meets the general eligibility requirements, as [~~per~~]described in Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets [~~(stocks, bonds, certified deposits, savings, checking and trust amounts)~~], annual income and number of family members living together using [~~D~~]division Form 2-1G. A [~~P~~]person[~~s~~] with a [~~D~~]discretionary [~~T~~]trust[~~s are~~] is exempt from the Graduated Fee Schedule as [~~per~~]described in Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The [P]person [~~/ family~~] shall return Form 2-1G to the support coordinator prior to delivery of new services. A [~~P~~]person[~~s / families~~] currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the [~~D~~]division. A [~~P~~]person[~~s / families~~] who completes the [~~D~~]division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the [P]person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income [~~(~~]using the formula: (assets + income) / by the total number of family members = available income[~~)~~]. Available income will be used to determine the fee percent ranging from 0% to 3%[~~(0 percent to 3 percent)~~]. The annual fee amount will be calculated by multiplying available income by the fee percent. A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver, who only meets general eligibility requirements, and [~~have~~]has an available income[~~s~~] below 300% [~~percent~~] of the poverty level will not be assessed a fee. A [~~P~~]person[~~s~~] with an available income[~~s~~] between 300% and 399% [~~percent~~] of poverty will be assessed a 1% [~~percent~~] fee, a [~~P~~]person[~~s~~] with an available income[~~s~~] between 400% and 499% [~~percent~~] of poverty will be assessed a 2% [~~percent~~] fee and those with available income over 500% [~~percent~~] of poverty will be assessed a 3% [~~percent~~] fee.

(e) No fee shall be assessed for a [~~P~~]person who does not participate in a Medicaid [~~W~~]waiver and who receives funding for less than 31% [~~percent~~] of their assessed need. A multiplier shall be applied to the fee of a [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver and who receive 31% to 100% [~~percent~~] of their assessed need.

(f) If a [~~P~~]person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. A [~~P~~]person[~~s~~] who does not participate in a Medicaid [~~W~~]waiver [~~under the age of~~]younger than 18 years of age shall be assessed a fee based upon parent income. A [~~P~~]person[~~s~~] who does not participate in a

Medicaid [~~W~~]waiver [~~over the age of~~]18 years of age or older shall be assessed a fee based upon individual income and assets.

(h) If the [~~P~~]person is assessed a fee, the [~~P~~]person shall pay the [~~D~~]division [~~of Services for People with Disabilities~~]or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the [~~P~~]person.

(i) If the [~~P~~]person fails to pay the fee for six months, the [~~D~~]division may reduce the [~~P~~]person's next year annual allocation to recover the amount due. If a [~~P~~]person can show good cause why the fee cannot be paid, the [D]division [D]director may grant an exception[~~s~~] on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The [~~D~~]division requires a person[~~s~~] applying for services to provide a valid Social Security Number. The [~~D~~]division adopts the same standard as Sections R414-302 and 42 CFR 435.910, 2014 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
Date of Enactment or Last Substantive Amendment: [~~October 23, 2017~~]2020
Notice of Continuation: October 23, 2017
Authorizing, and Implemented or Interpreted Law: 62A-5-103; 62A-5-105

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R657-52**	**Filing No. 52554**

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (Division) rule pursuant to the commercial harvesting of brine shrimp and brine shrimp eggs.
4. Summary of the new rule or change:
The proposed amendments to this rule: 1) allow for the transfer of a brine shrimp harvesting certificate of registration as long as it's accompanied by an assignable contract with another party to harvest brine shrimp eggs for the certificate of registration holder; 2) modify the definition of "harvesting equipment" to include the addition of an assignable contract as equipment; 3)set criteria for when to end a pursuit on a single animal; and 4) technical changes as needed.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The proposed rule amendments clarify the process for transferring an individual certificate of registration (COR) with a contract to another entity, all of these changes can be initiated within the current workload and resources of the Division, therefore, the Division determines that these amendments do not create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.
B) Local governments:
Since the proposed amendments clarify a process for authorized COR holders this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
The proposed rule amendments will directly impact non-small businesses that currently hold authorized COR's to harvest brine shrimp, however because it is a procedural change a financial impact is not expected.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an ***agency***):
These amendments do not have the potential to create a cost impact to those individuals not currently holding an authorized COR to commercially harvest brine shrimp or brine shrimp eggs.
F) Compliance costs for affected persons:
The Division determines that this amendment will not create additional costs for those participating in the commercial harvesting of brine shrimp or brine shrimp eggs.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.
B) Name and title of department head commenting on the fiscal impacts:
Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 23-14-18	Section 23-14-19	Section 23-14-3

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks,Director	**Date:**	02/11/2020

R657. Natural Resources, Wildlife Resources.
R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.
R657-52-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) The objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-52-3. Certificate of Registration Required.

(1)(a) A person may not harvest, possess, or transport brine shrimp or brine shrimp eggs without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(2)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration and the corresponding certificate of registration marker is required for each harvest location.

(c) The original copy of the certificate of registration must be present at the harvest location while harvesting brine shrimp or brine shrimp eggs.

(3) A certificate of registration under this rule is not required:

(a) to harvest 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded;

(i) a certificate of registration is required, [~~however,~~]under Rule R657-3 for the activities described in Subsection (a);

(b) for the retail sale of brine shrimp or brine shrimp eggs imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(c) to process lawfully acquired brine shrimp or brine shrimp eggs;

(d) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in [~~rule~~]Rule R657-3; or

(e) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(i) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(ii) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(iii) the brine shrimp or brine shrimp eggs are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(4) Certificates of registration are not transferable, except as provided in Section R657-52-7.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(7) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (6) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in Section R657-52-5; and

(b) submit a cashiers check to the division in the established fee amount for each certificate of registration applied for.

(8)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(9) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(10) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(11) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-52-7. Certificate of Registration Transfers.

(1) Pursuant to Subsection 23-19-1(2), a person may not lend, transfer, sell, give or assign a certificate of registration to harvest brine shrimp and brine shrimp eggs belonging to the person or the rights granted thereby, except as authorized hereafter.

(2)(a) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization that has been issued a certificate of registration by the division to harvest brine shrimp and brine shrimp eggs.

(b) "Harvesting equipment" for purposes of this section means:

(i) the physical harvesting equipment ordinarily required to effectively utilize a certificate of registration; or

(ii) an assignable contract with an active remaining term of five or more years between a business entity possessing a valid certificate of registration under this rule and another business entity for the:

(A) utilization of that entity's harvesting equipment; or

(B) performance of actual harvest activities in behalf of the certificate of registration holder.

(3)(a) The division may authorize, consistent with the requirements of this section, the transfer of a valid certificate of registration to harvest brine shrimp and brine shrimp eggs from the lawful holder to [~~an other~~]another person or entity in the following instances:

(i) where any transaction or occurrence will cause the name of the business entity recorded as the certificate of registration holder to change from that specifically identified on the certificate of registration;

(ii) where any transaction or occurrence will cause the business entity recorded as the certificate of registration holder to permanently reorganize, dissolve, lapse, or otherwise cease to exist as a legal business entity under the laws of the State of Utah or the jurisdiction where the business entity was organized; or

(iii) where any transaction or occurrence effectively transfers a certificate of registration to harvest brine shrimp and brine shrimp eggs in violation of Subsection 23-19-1(2).

(b) written approval from the division for any certificate of registration transfer permitted under this rule shall be obtained prior to any transfer of the certificate of registration or the rights granted thereunder.

(c) Transferring or selling an ownership interest in a business entity holding a certificate of registration to harvest brine shrimp and brine shrimp eggs does not require division approval provided the transfer of ownership does not cause the business entity to temporarily or permanently change its name, reorganize, dissolve, lapse, or otherwise cease to exist as a legally recognized business entity under the laws of the State of Utah.

(4) Obtaining division approval to transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs shall be initiated by application to the division, as provided in Subsections 4(a) through 4(e).

(a) Complete the application prescribed by the division and submit it to the division's wildlife registration office.

(b) Applications may be submitted any time during the year.

(c) Annual applications and fees for certificates of registration renewal shall be submitted between May 1 and May 31, regardless whether a transfer application is contemplated or pending.

(d) If an application to transfer a certificate of registration identifies a business entity as the transferee, the transferee must designate a person responsible for that entity.

(i) The transferee shall provide on or with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(e) The division may return any application that is incomplete or completed incorrectly.

(5) The division shall respond to the application to transfer a certificate of registration within 20 days of receipt in one of the following forms:

(a) a letter approving the application;

(b) a letter denying the application and identifying the reasons for denial;

(c) a letter identifying deficiencies in the application and requesting additional information from the applicant; or

(d) a letter notifying the applicant that the division requires additional time to process and consider the application with an explanation of the extenuating circumstances necessitating the extension.

(6) The division shall deny an application to transfer a certificate of registration where any of the following exists:

(a) the proposed transferee fails to satisfy all the requirements necessary to obtain an original certificate of registration; or

(b) the applicant transferor fails to demonstrate that the certificate of registration will be transferred in connection with the sale or transfer of the entire brine shrimp harvest operation or the harvesting equipment ordinarily required to effectively utilize a certificate of registration.

(i) Business entities holding no harvesting equipment may be approved for a certificate of registration transfer only where the entire business entity and brine shrimp harvest operation is transferred along with all certificates of registration held by the business entity.

(ii) Business entities changing the official name maintained on division records as the certificate of registration holder shall simply establish that the entity's ownership and business structure will not materially differ under the new business name.

(iii) Business entities holding a certificate of registration under this rule and a qualified contract with another entity for the utilization of harvest equipment or the performance of harvest activities in behalf of the certificate of registration holder may be approved for a certificate of registration transfer provided:

(A) the contract is assignable and assigned to the transferee in conjunction with the transfer of the certificate of registration;

(B) the contract has a remaining active term of five or more years; and

(C) one of the following is submitted to the division with the transfer application:

(I) a copy of the contract and evidence it will be assigned to the transferee upon transfer of the certificate of registration; or

(II) an affidavit signed by the contract entity providing harvesting equipment or services to the transferor verifying the contract obligates the affiant to provide harvest equipment or harvesting services to the transferor for five or more years into the future and will be assigned to the proposed certificate of registration transferee upon transfer of the certificate of registration thereby entitling the transferee the use of the equipment or receipt of the harvesting services.

(7) The division may deny authorizing a certificate of registration transfer to any proposed transferee for any of the following reasons:

(a) the applicant transferee has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(8)(a) If a transfer application is approved, the division shall accept the surrender of the transferor's certificate of registration and reissue it to the proposed transferee within 10 business days of the surrender consistent with the requirements prescribed in this rule.

(b) The proposed transferee may not begin harvesting brine shrimp or brine shrimp eggs until it has received a certificate of registration from the division issued in its name, and only then in conformance with all applicable laws, rules, and orders of the Wildlife Board and division.

(c) In receiving a certificate of registration transferred under this S[**s**]ection, the transferee assumes no additional privileges or opportunities with respect to harvesting brine shrimp and brine shrimp eggs than those formerly possessed by the transferor.

KEY: brine shrimp, commercialization
Date of Enactment or Last Substantive Amendment: [~~November 7, 2013~~]2020
Notice of Continuation: September 21, 2017
Authorizing, and Implemented or Interpreted Law: 23-14-3; 23-14-18; 23-14-19; 23-15-7; 23-15-8; 23-15-9; 23-19-1(2)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R861-1A-9**	**Filing No. 52377**

Agency Information

1. Department:	Tax Commission	
Agency:	Administration	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jason Gardner	801-297-3902	jasongardner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006
3. Purpose of the new rule or reason for the change:
The reason for the change is to specify the process by which the Tax Commission determines the existence of a factual error for purposes of locally assessed property tax.
4. Summary of the new rule or change:
The proposed amendment requires that if a taxpayer asserts a factual error before the Tax Commission and the county assessor fails to respond to an order to show cause within 15 days, the Tax Commission may treat the failure to respond as if the county assessor had acknowledged the existence of the factual error.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of the state government because property tax revenues are not included in the state budget.
B) Local governments:
This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of local governments because the changes do not have the effect of increasing or decreasing the amount of property tax due.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of small businesses because the changes do not have the effect of increasing or decreasing the amount of property tax due.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of non-small businesses because the changes do not have the effect of increasing or decreasing the amount of property tax due.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed amendment is not expected to have a fiscal impact on the revenues or expenditures of persons other than small businesses, non-small businesses, state or local government entities because the changes do not have the effect of increasing or decreasing the amount of property tax due.

F) Compliance costs for affected persons:

This proposed amendment is not expected to impose additional compliance costs on affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca Rockwell of the Utah State Tax Commission has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of businesses because the proposed changes do not have the effect of increasing or decreasing the amount of property tax due.

B) Name and title of department head commenting on the fiscal impacts:

Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 59-2-212	Section 59-2-1004	Section 59-2-1006

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	**Date:**	02/13/2020

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of

property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.

(b) A party may raise a new issue before the commission.

(c)(i) If a taxpayer asserts before the commission a factual error as defined in R884-24P-66, the commission may issue an order to show cause as to whether the county assessor recognizes the existence of the factual error.

(ii) If the county assessor fails to respond to an order to show cause within 15 calendar days of issuance under Subsection (6)(c)(i), the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsections (5)(a) through (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsections (5)(a) through (c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, see Section 59-2-1004 and R884-24P-66.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~September 12, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R865-9I-34**	**Filing No. 52579**

Agency Information

1. Department:	Tax Commission	
Agency:	Auditing	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jason Gardner	801-297-3902	jasongardner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220
3. Purpose of the new rule or reason for the change:
The reason for this change is to update language and citation references for legislative changes made during the 2019 General Session in H.B. 24 Property Tax Exemptions, Deferrals, and Abatements Amendments.

4. Summary of the new rule or change:

The proposed amendment includes references to Title 59, Chapter 2, Parts 18 and 19 that were created under H.B. 24 (2019) and were previously included in Title 59, Chapter 2, Part 11. They also clarify that persons claiming an abatement under Title 59, Chapter 2,Parts 11, 18, or 19 are not precluded from claiming a homeowner's or renter's credit.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of the state government because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

B) Local governments:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of local governments because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of small businesses because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of non-small businesses because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed amendment is not expected to have a fiscal impact on the revenues or expenditures of persons other than small businesses, non-small businesses, state or local government entities because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

F) Compliance costs for affected persons:

This proposed amendment is not expected to impose any compliance costs on affected persons because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca Rockwell of the Utah State Tax Commission has reviewed and approved this analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed amendment is not expected to have any fiscal impacts on the revenues or expenditures of businesses because any fiscal impact would have been attributable to H.B. 24 (2019) and accounted for in the legislative fiscal note.

B) Name and title of department head commenting on the fiscal impacts:
Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 59-2-1201	Section 59-2-1202	Section 59-2-1203
Section 59-2-1204	Section 59-2-1205	Section 59-2-1206
Section 59-2-1207	Section 59-2-1208	Section 59-2-1209
Section 59-2-1210	Section 59-2-1211	Section 59-2-1212
Section 59-2-1213	Section 59-2-1214	Section 59-2-1215
Section 59-2-1216	Section 59-2-1217	Section 59-2-1218
Section 59-2-1219	Section 59-2-1220	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	Date:	02/14/2020

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

[~~A.~~](1) "Household" is determined as follows:

[~~1.~~](a) For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

[~~2.~~](b) For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

[~~B.~~](2) "Nontaxable income" includes:

[~~1.~~](a) the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

[~~2.~~](b) the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

[~~C.~~](3) "Nontaxable income" does not include:

[~~1.~~](a) federal tax refunds;

[~~2.~~](b) the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

[~~3.~~](c) the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

[~~4.~~](d) payments received under a reverse mortgage;

[~~5.~~](e) payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

[~~6.~~](f) gifts and bequests.

[~~D.~~](4) "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

[~~E.~~](5) A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

[~~F.~~](6) State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

[~~G.~~](7) Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

[~~1.~~](a) only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

[~~2.~~](b) that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

[~~H.~~](8) Persons claiming a property tax exemption, deferral, reduction, or abatement under Title 59, Chapter 2, [~~Part~~]Parts 11, 18, or 19 are not precluded from claiming a homeowner's or renter's credit.

KEY: historic preservation, income tax, tax returns, enterprise zones
Date of Enactment or Last Substantive Amendment: [~~August 22, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-

1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63N-2-201 through 63N-2-215

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R865-19S-79**	**Filing No. 52580**

Agency Information

1. Department:	Tax Commission	
Agency:	Auditing	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jason Gardner	801-297-3902	jasongardner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353

3. Purpose of the new rule or reason for the change:

The reason for the change is to include additional statutory references of authority and clarify definitions consistent with current application of statute.

4. Summary of the new rule or change:

The proposed amendment adds references to Sections 59-12-603 and 59-28-103 to clarify that the rule applies to the Tourism, Recreation, Cultural, Convention, and Airport Tax Act and the State Transient Room Tax Act. Additionally, the rule change clarifies the definitions of "tourist home," "hotel," "motel," and "trailer court" consistent with current application of statute.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of the state government because the changes are consistent with current application of statute.

B) Local governments:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of local governments because the changes are consistent with current application of statute.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of small businesses because the changes are consistent with current application of statute.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of non-small businesses because the changes are consistent with current application of statute.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed amendment is not expected to have a fiscal impact on the revenues or expenditures of persons other than small businesses, non-small businesses, state or local government entities because the changes are consistent with current application of statute.

F) Compliance costs for affected persons:

This proposed amendment is not expected to impose any compliance costs on affected persons because the changes are consistent with current application of statute.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**

Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca Rockwell of the Utah State Tax Commission has reviewed and approved this fiscal impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of businesses because the changes are consistent with current application of statute.

B) Name and title of department head commenting on the fiscal impacts:

Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 59-12-103	Section 59-12-301	Section 59-12-352
Section 59-12-353	Section 59-12-603	Section 59-28-103

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020
10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	**Date:**	02/14/2020

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352,[~~ and~~] 59-12-353, 59-12-603, and 59-28-103.

[~~A.~~](1) The following definitions shall be used for purposes of administering the:

(a) sales tax on accommodations and services authorized by Subsection 59-12-103(1)(i);

(b) tourism, recreation, cultural, convention, and airport facilities tax authorized by Subsection 59-12-603(1)(a)(iii); and

(c) transient room taxes[~~ provided for in~~] authorized by Sections[~~ 59-12-103,~~] 59-12-301, 59-12-352,[~~ and~~] 59-12-353, and 59-28-103.

[~~1.~~](2)(a) "Tourist home," "hotel," or "motel" means any property described in Subsection (2)(b) that:

(i) [~~place having~~]has rooms, apartments, or units; and

(ii) is regularly rented for less than 30 consecutive days. [~~to rent by the day, week, or month.~~]

(b) For purposes of Subsection (2)(a), "tourist home," "hotel," or "motel" includes a:

(i) motor court;

(ii) inn;

(iii) hostel;

(iv) resort;

(v) lodge; or

(vi) location similar to those described in Subsections (2)(b)(i) through (v).

[~~2.~~](3)(a) "Trailer court" means any property described in Subsection (3)(b) that: [~~place having trailers or space to park a trailer for rent by the day, week, or month.~~]

(i) has trailers or space to park a trailer; and

(ii) is regularly rented for less than 30 consecutive days.

(b) For purposes of Subsection (3)(a), "trailer court" includes a:

(i) campground;

(ii) mobile home park;

(iii) recreational vehicle park; or

(iv) location similar to those described in Subsections (3)(b)(i) through (iii).

[~~3.~~](4) "Trailer" means house trailer, travel trailer, and tent trailer.

[~~4.~~](5)(a) "Accommodations and [~~services~~]service charges" means any charge for the use of a property described in Subsections (2) or (3).[~~made for the room, apartment, unit, trailer, or space to park a trailer, and~~]

(b) For purposes of Subsection (5)(a), "accommodations and service charges" includes charges made for:

(i) local telephone;[~~,~~]

(ii) electricity;[~~,~~]

(iii) propane gas;[~~, or~~]

(iv) showers; or

(iv) [~~similar~~] services similar to those described in Subsections (5)(b)(i) through (iv).

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~September 12, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R865-19S-96**	**Filing No. 52581**

Agency Information

1. Department:	Tax Commission	
Agency:	Auditing	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jason Gardner	801-297-3902	jasongardner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301

3. Purpose of the new rule or reason for the change:

This section is deleted and the pertinent language is merged into Section R865-19S-79. (EDITOR'S NOTE: The proposed amendment to Section R865-19S-79 is under ID No. 52580 in this issue, March 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

The deletion of this section would consolidate overlapping and duplicative language with Section R865-19S-79. With the proposed amendments to Section R865-19S-79, this section is no longer necessary.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed deletion is not expected to have any fiscal impact on the revenues or expenditures of the state government because the pertinent rule language will still be included in Section R865-19S-79.

B) Local governments:

This proposed deletion is not expected to have any fiscal impact on the revenues or expenditures of local governments because the pertinent rule language will still be included in Section R865-19S-79.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed deletion is not expected to have any fiscal impact on the revenues or expenditures of small businesses because the pertinent rule language will still be included in Section R865-19S-79.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed deletion is not expected to have any fiscal impact on the revenues or expenditures of non-small businesses because the pertinent rule language will still be included in Section R865-19S-79.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed deletion is not expected to have a fiscal impact on the revenues or expenditures of persons other than small businesses, non-small businesses, state or local government entities because the pertinent rule language will still be included in Section R865-19S-79.

F) Compliance costs for affected persons:

This proposed deletion is not expected to impose any compliance costs on affected persons because the pertinent rule language will still be included in Section R865-19S-79.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca Rockwell of the Utah State Tax Commission has reviewed and approved this fiscal impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed deletion is not expected to have any fiscal impacts on the revenues or expenditures of businesses because the pertinent rule language will still be included in Section R865-19S-79.

B) Name and title of department head commenting on the fiscal impacts:

Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 59-12-103	Section 59-12-301	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	**Date:**	02/14/2020

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
[~~R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.~~

~~A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).~~

~~B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.~~

~~C. The transient room tax is not subject to sales tax.~~]

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~September 12, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-

103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R884-24P-66**	**Filing No. 52382**

Agency Information

1. Department:	Tax Commission	
Agency:	Property Tax	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jason Gardner	801-297-3902	jasongardner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004

3. Purpose of the new rule or reason for the change:

The reason for the change is to modify the definition of "factual error" for purposes of locally assessed property tax and update code references consistent with H.B. 24, Property Tax Exemptions, Deferrals, and Abatements Amendments, passed in the 2019 General Session.

4. Summary of the new rule or change:

The proposed amendment modifies the definition of "factual error" by amending the requirement that the taxpayer and assessor "agree" upon the error. The definition now requires that the taxpayer and assessor have "recognized" the existence of the error. Additionally, this proposed amendment includes references to Title 59, Chapter 2, Parts 18 and 19 that were created under H.B. 24 (2019) and were previously included in Title 59, Chapter 2, Part 11.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of the state government because property tax revenues are not included in the state budget.

B) Local governments:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of local governments because the changes do not have the effect of increasing or decreasing the amount of property tax due to any local government.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of small businesses because the changes do not have the effect of increasing or decreasing the amount of property tax due.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of non-small businesses because the changes do not have the effect of increasing or decreasing the amount of property tax due.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed amendment is not expected to have a fiscal impact on the revenues or expenditures of persons other than small businesses, non-small businesses, state or local government entities because the changes do not have the effect of increasing or decreasing the amount of property tax due.

F) Compliance costs for affected persons:

This proposed amendment is not expected to impose additional compliance costs on affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca Rockwell of the Utah State Tax Commission has reviewed and approved this fiscal impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed amendment is not expected to have any fiscal impact on the revenues or expenditures of businesses because the proposed changes do not have the effect of increasing or decreasing the amount of property tax due.

B) Name and title of department head commenting on the fiscal impacts:

Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 59-2-1001	Section 59-2-1004	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	**Date:**	02/13/2020

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error described in Subsection (1)(b)[~~that is~~]:

(i) that is objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) that is demonstrated by clear and convincing evidence; and

(iii) [~~agreed upon by the taxpayer and the assessor~~]the existence of which is recognized by the taxpayer and the county assessor.

(b) [~~Factual error includes~~]Subject to Subsection (1)(c), "factual error" includes an error that is:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption, deferral, reduction, or abatement under:

(A) Section 59-2-103;[~~-or~~]

(B) Title 59, Chapter 2, Part 11;

(C) Title 59, Chapter 2, Part 18; or

(D) Title 59, Chapter 2, Part 19;

[~~(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;~~]

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) "Factual error" does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the county assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)[~~(c)~~] is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)[~~(c)~~] and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the county assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the county assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Subsection 59-2-1004(3)(a) if any of the following conditions apply:

(a) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [~~September 12, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-

1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1**	**Filing No. 52550**

Agency Information

1. Department:	Treasurer	
Agency:	Unclaimed Property	
Room no.:	Suite #102	
Building:	RC2	
Street address:	168 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 140530	
City, state, zip:	Salt Lake City, UT 84114-0530	
Contact person(s):		
Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Unclaimed Property Act Rules

3. Purpose of the new rule or reason for the change:

Comments from the public prompted the amendments of these sections.

4. Summary of the new rule or change:

These sections elaborate on some holder best practices for due diligence to prevent items becoming lost or abandoned and clarify notice timeframes and thresholds for aggregate properties.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.

B) Local governments:

Existing processes are already in place, and these changes mainly add clarity.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Existing processes are already in place, and these changes mainly add clarity.

F) Compliance costs for affected persons:

The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Existing processes are already in place and these changes mainly add clarity.

B) Name and title of department head commenting on the fiscal impacts:

Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-17. Report Contents.

(1) The report required by Part 4 of the Act must:

(a) Be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(b) If filed electronically, be in a secure format approved by the administrator which protects confidential information of the apparent owner;

(c) Describe the property;

(d) Except for a traveler's check, money order, or similar instrument, contain the name, if known, last-known address, if known, e-mail address, if known, and Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of $5~~0~~ or more;

(e) For an amount held or owing under a life or endowment insurance policy, annuity contract, or other property where ownership vests in a beneficiary upon the death of the owner, contain the name and last-known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;

(f) For property held in or removed from a safe-deposit box, indicate the location of the property, where it may be inspected by the administrator, and any amounts owed to the holder under Section 67-4a-606 of the Act;

(g) Combine all dividend checks into one property for each reported account;

(h) Contain the commencement date for determining abandonment;

(i) State that the holder has complied with the notice requirements of the Act; and,

(j) Identify property that is a non-freely transferable security and explain why it is a non-freely transferable security

(2) Holders may report property valued at less than $5~~0~~ each in the aggregate. However, the administrator may request that the holder provide information about the name, address, Social Security number or taxpayer identification number of an apparent owner of property with a value of less than $5~~0~~ when the information is necessary to verify or process a claim filed with the administrator by an apparent owner.

(3) If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder must include in the report its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.

R966-1-22. Due Diligence Notice by Holder.

(1) Sections 67-4~~a~~[~~1~~]-501 and 67-4~~a~~[~~1~~]-502 of the Act specify when and how a holder must provide notice to the apparent owner of property presumed abandoned. This notice process is a

"due diligence notice" from the holder to the apparent owner. A due diligence notice is intended to provide an opportunity for an apparent owner to indicate interest in the property presumed abandoned prior to such property being reported and remitted to the administrator.

(2) Unless otherwise provided by the Act or these rules, the holder of property presumed abandoned shall send to the apparent owner a due diligence notice by first-class United States mail between 60 days [~~and one year~~]to 180 days before reporting the property.

(3) A holder does not need to send notice by first-class United States mail if any of the following are true:

(a) The property is valued at less than $50;

(b) The holder does not have in its records an address for the apparent owner that is sufficient for delivery of first-class United States mail;

(c) The holder's records indicate that the address for the apparent owner is invalid; or,

(d) The holder sends notice by certified United States mail.

(4) If the holder has in its records an e-mail address for an apparent owner and the apparent owner has consented to receive e-mail from the holder, then unless the holder reasonably believes the e-mail address is invalid, the holder shall send a due diligence notice by e-mail to the apparent owner in addition to any other due diligence notice required by the Act.

(5) Certified mail due diligence for securities valued at $1,000 or more.

(a) If the holder sends a due diligence notice by certified mail, then the holder does not need to send a due diligence notice by first-class United States mail.

(b) A signed return receipt in response to a notice sent by certified United States mail shall constitute a record communicated by the apparent owner to the holder concerning the property or the account in which the property is held, and thus shall constitute an indication of interest by the apparent owner in the property under Section 67-4a-208 of the Act.

(6) A holder may contract with a third party to provide the required due diligence notice to an apparent owner under the Act and these rules.

(a) Whether or not the holder contracts with a third party to provide required due diligence notices, the holder remains responsible for ensuring that any required due diligence notices are provided prior to the reporting and remitting of property presumed abandoned to the administrator.

(b) If a holder contracts with a third party to provide required due diligence notices and the due diligence notice is being sent after the date the property was presumed abandoned under the Act, then pursuant to Section 67-4a-1302 of the Act neither the holder nor such third party may charge the apparent owner a fee to indicate an interest in property presumed abandoned or to otherwise prevent the reporting and remitting of property presumed abandoned to the administrator.

(7) Contents of due diligence notice.

(a) A due diligence notice by a holder must contain a heading that reads substantially as follows: "Notice. The State of Utah requires us to notify you that your property may be transferred to the custody of the State Treasurer if you do not contact us before (insert date that is 30 days after the date of this notice)."

(b) A due diligence notice by a holder must:

(i) Identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(ii) State that the property will be turned over to the State Treasurer;

(iii) State that after the property is turned over to the State Treasurer an apparent owner that seeks return of the property may file a claim with the State Treasurer;

(iv) State that property that is not legal tender of the United States may be sold by the State Treasurer;

(v) Provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the State Treasurer; and,

(vi) Provide the name, address, and e-mail address or telephone number to contact the holder.

(c) In a due diligence notice, the holder may also list a website where apparent owners may obtain more information about how to prevent the holder from reporting and paying or delivering the property to the State Treasurer.

(8) Holder deduction of costs of due diligence notices.

(a) A holder that reports and remits money may deduct from total amounts remitted, the actual costs of due diligence notices.

(b) The deduction shall consist of the cost of envelopes, postage, and stationery. No other costs may be deducted.

(c) For purposes of holder deductions for due diligence mailings, postage includes amounts paid to the United States Postal Service for first class United States mail and certified United States mail.

(d) A holder may be required to document or certify to the costs incurred and deducted.

KEY: adjudicative procedures, state treasurer, unclaimed property
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 67-4a-208; 67-4a-606; 67-4a-501; 67-4a-502

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1-4**	**Filing No. 52548**

Agency Information

1. Department:	Treasurer	
Agency:	Unclaimed Property	
Room no.:	Suite #102	
Building:	RC2	
Street address:	168 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 140530	
City, state, zip:	Salt Lake City, UT 84114-0530	
Contact person(s):		
Name:	**Phone:**	**Email:**

Dennis Johnston	801-715-3321	dljohnston@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Tax-Deferred Accounts

3. Purpose of the new rule or reason for the change:

Comments from the public prompted the amendment of this section.

4. Summary of the new rule or change:

This section clarifies when tax deferred accounts are reportable to the .

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.

B) Local governments:

Existing processes are already in place, and these changes mainly add clarity.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Existing processes are already in place, and these changes mainly add clarity.

F) Compliance costs for affected persons:

The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Existing processes are already in place and these changes mainly add clarity.

B) Name and title of department head commenting on the fiscal impacts:

Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-4. Tax-Deferred Accounts.

(1) Sections 67-4a-202 and 67-4a-203 of the Act states when "tax deferred" accounts are presumptively abandoned. Section 67-4a-202 prescribes the rules for tax deferred retirement accounts and Section 67-4a-203 prescribes the rules for other tax deferred accounts. These rules for tax deferred accounts generally have longer periods of abandonment than accounts covered by Section 67-4a-202 of the Act.

(2) A retirement account that is tax advantaged under the income-tax laws of the United States will generally be considered tax deferred under the Act. As an example, but not a limitation, a Roth IRA should be considered tax deferred under the Act and the rules under Section 67-4a-202 apply to a Roth IRA.

(3) In some cases federal law, specifically ERISA, 29 U.S.C. Section 1001 et seq., may preempt the Act and prevent reporting and remitting retirement accounts or other property representing a plan asset, that would otherwise be reportable under the Act. Non-qualified, government, and church plans are not subject to an ERISA preemption, nor are uncashed plan distribution checks issued by a qualified plan where the plan either lacks or has failed to exercise a forfeiture or other reversionary interest.

(4) If a holder is uncertain whether (i) an account qualifies as tax deferred under the Act, and therefore whether such account is covered by Section 67-4a-201 or by Sections 67-4a-202 or 67-4a-203, (ii) ERISA preempts the Act for a retirement account, (iii) whether an account is covered by Section 67-4a-202 or Section 67-4a-203, then the holder may specifically identify the property in a report filed with the administrator or give express notice to the administrator of a potential dispute regarding the property. Specifically identifying the property in a report or providing express notice to the administrator both ensures that such property will be covered by the limitations period of Section 67-4a-610 of the Act and demonstrates that the holder is attempting to comply with the Act in good faith and without negligence.

(5) Pursuant to Section 67-4a-405 of the Act, property reportable and payable or deliverable absent owner demand provision, and Section 67-4a-610(1) of the Act, anti-limitations provision, , a non-qualified plan or plan not otherwise subject to ERISA is prohibited from forfeiting an account or other property.

(6) Under Section 67-4a-202(1), an IRA is considered dormant three years after failed delivery of communications. If an IRA falls within this provision but the owner is under age 59.5, Utah Treasury asks that a due diligence mailing be made but that the property not be reported and remitted unless the owner's IRA remains in the same dormant status when he or she reaches the earliest date of a required minimum distribution[~~age 59.5~~]. This is to address the issue of a potential penalty associated with early IRA distributions.

(7) Under subsection 1(b) of the IRA provision, an IRA is considered dormant and subject to due diligence on the earlier of (i) the earliest date of a required minimum distribution[~~attained age of 70.5~~] or (ii) two years after confirmation of death. If either of triggers (i) or (ii) are met, the property is subject to due diligence. There is no additional returned mail requirement under these circumstances and returned mail on the customer IRA, or the lack thereof is not a factor in the dormancy analysis under section 1(b). Because of the "or" operator between subsection 1(a) and 1(b), if either of the dormancy triggers in 1(a) or 1(b) are met, due diligence is required, and if no response is received, the property must be reported and remitted.

KEY: adjudicative procedures, state treasurer, unclaimed property
Date of Enactment or Last Substantive Amendment: [~~January 22,~~] 2020
Authorizing, and Implemented or Interpreted Law: 67-4a-202; 67-4a-203; 67-4a-405; 67-4a-610

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1-13**	**Filing No. 52549**

Agency Information

1. Department:	Treasurer
Agency:	Unclaimed Property

Room no.:	Suite #102
Building:	RC2
Street address:	168 N 1950 W
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 140530
City, state, zip:	Salt Lake City, UT 84114-0530
Contact person(s):	

Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Deceased Owner

3. Purpose of the new rule or reason for the change:

Comments from the public prompted the amendment of this section.

4. Summary of the new rule or change:

This section clarifies holder requirements surrounding property of deceased owners.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.

B) Local governments:

Existing processes are already in place, and these changes mainly add clarity.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

Existing processes are already in place, and these changes mainly add clarity.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Existing processes are already in place, and these changes mainly add clarity.

F) Compliance costs for affected persons:

The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
Existing processes are already in place and these changes mainly add clarity.
B) Name and title of department head commenting on the fiscal impacts:
Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-13. Deceased Owner.

[~~(1) Subject to the owner interest provisions of Section 67-4a-201 of the Act, a deceased owner cannot indicate interest in his or her property.~~

~~(a) Apparent owner interest shall include the activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property when the apparent owner as listed in the records of the holder is deceased.~~

~~(b) Thus, while a deceased apparent owner can no longer indicate interest in their own property, the new owner or his/her agent(s) may indicate interest in the property and, thus, prevent abandonment.~~

~~(2) If the apparent owner as listed in the records of the holder is deceased and the abandonment period for the owner's property shall be set in accordance with Section 67-4a-201.~~

~~(3) A holder who fails to report, pay, or deliver property within the time prescribed by the Act shall not be required to pay interest or be subject to penalties if the failure to report, pay, or deliver the property was caused solely by the lack of knowledge of the death that established a shorter period of abandonment under the Act.~~

~~(4) The Act does not impose a new or separate duty on a holder to determine whether an apparent owner is deceased. However, the Act does not relieve a holder of any duty imposed by another law, whether state or federal, that may impose such a duty.~~

~~(5) Sections 67-4a-202 and 67-4a-206 of the Act both provide that when a holder, in the ordinary course of its business, receives notice or an indication of the death of an apparent owner, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.~~

~~(a) These provisions are not intended to require a holder to independently confirm the death of the apparent owner when the holder reasonably believes that the apparent owner is deceased.~~

~~(b) Instead, these provisions establish a 90-day deadline for a holder to conduct any independent investigation or search to confirm the death of the apparent owner.~~

~~(c) Thus, by way of example and not of limitation, if a holder learns that an apparent owner is listed on the Social Security Administration's Death Master File (DMF) and the holder is satisfied that the presumption of death from such a match is correct, then the holder does not need to independently confirm the death of the apparent owner.~~]<u>(1) Subject to the clarifications listed in sections (2) and (3) below, if all owners of a property as listed in the records of the holder, are deceased, the date of death of the last living owner triggers the commencement of the dormancy period for the deceased owner(s) property, regardless of whether the indicia of dormancy associated with the specific property type have been met. A deceased owner cannot indicate interest in his or her property.</u>

<u>(a) Apparent owner interest shall include the activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property when the apparent owner as listed in the records of the holder is deceased.</u>

<u>(b) Thus, while a deceased apparent owner can no longer indicate interest in their own property, the new owner or his/her agent(s) may indicate interest in the property and, thus, prevent abandonment.</u>

<u>(2) A holder who fails to report, pay, or deliver property within the time prescribed by the Act shall not be required to pay interest or be subject to penalties if the failure to report, pay, or deliver the property was caused solely by the lack of knowledge of the death that established a shorter period of abandonment under the Act.</u>

<u>(3) The Act does not impose a new or separate duty on a holder to determine whether an apparent owner is deceased.</u>

However, the Act does not relieve a holder of any duty imposed by another law, whether state or federal, that may impose such a duty.

(4) This section R966-1-13 is not intended to require a holder to independently confirm the death of the apparent owner when the holder reasonably believes that the apparent owner is deceased.

(a) Thus, by way of example and not of limitation, if a holder learns that an apparent owner is listed on the Social Security Administration's Death Master File (DMF) and the holder is satisfied that the presumption of death from such a match is correct, then the holder does not need to independently confirm the death of the apparent owner.

KEY: adjudicative procedures, state treasurer, unclaimed property
Date of Enactment or Last Substantive Amendment: [~~January 22,~~] 2020
Authorizing, and Implemented or Interpreted Law: 67-4a-201; 67-4a-202; 67-4a-206

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1-23**	**Filing No. 52551**

Agency Information

1. Department:	Treasurer	
Agency:	Unclaimed Property	
Room no.:	Suite #102	
Building:	RC2	
Street address:	168 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 140530	
City, state, zip:	Salt Lake City, UT 84114-0530	
Contact person(s):		
Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Retention of Records by Holder
3. Purpose of the new rule or reason for the change:
Comments from the public prompted the amendment of this section.
4. Summary of the new rule or change:
This change seeks to clarify record retention standards and encourage compliance with the Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.
B) Local governments:
Existing processes are already in place, and these changes mainly add clarity.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
Existing processes are already in place, and these changes mainly add clarity.
F) Compliance costs for affected persons:
The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Existing processes are already in place and these changes mainly add clarity.

B) Name and title of department head commenting on the fiscal impacts:

Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-23. Retention of Records by Holder.

[~~(1) A holder is required to retain records for 5 years after the later of the date the report was filed or the last date a timely report was due to be filed.~~

~~(2) The records must contain:~~

~~(a) The information required to be included in the report;~~

~~(b) The date, place, and nature of the circumstances that gave rise to the property right;~~

~~(c) The amount or value of the property;~~

~~(d) The last address of the apparent owner, if known to the holder;~~

~~(e) Sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act; and~~

~~(f) A record of the instruments while they remain outstanding indicating the state and date of issue if the holder sells, issues, or provides to others for sale or issue in this State traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable.~~

~~(3) If a holder fails to maintain records required by Section 67-4a-404 of the Act, then the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards in this Part.~~

~~(4) Both the records retention period of Section 67-4a-404 of the Act and the statute of limitations in Section 67-4a-610(2) of the Act are 10 years. However, the statute of limitations only applies after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. If the statute of limitations has been tolled because the holder failed to either report property or provide express notice to the administrator and the holder fails to maintain sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act, then the administrator may use estimation in an examination of such holder pursuant to Section 67-4a-1006 of the Act and the procedures and standards of this Part.~~]<u>(1) A holder is required to retain records for five years after the later of the date the report was filed or the last date a timely report was due to be filed.</u>

<u>(2) The records must contain:</u>

(a) The information required to be included in the report;
(b) The date, place, and nature of the circumstances that gave rise to the property right;
(c) The amount or value of the property;
(d) The last address of the apparent owner, if known to the holder;
(e) Sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act; and
(f) A record of the instruments while they remain outstanding indicating the state and date of issue if the holder sells, issues, or provides to others for sale or issue in this State traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable.
(3) If a holder fails to maintain records required by Section 67-4a-404, then the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards in this Part.
(4) Both the records retention period of Section 67-4a-404 and the statute of limitations in Subsection 67-4a-610(2) of the Act are five years. However, the statute of limitations only applies after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. If the statute of limitations has been tolled because the holder failed to either report property or provide express notice to the administrator and the holder fails to maintain sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act, then the administrator may use estimation in an examination of such holder pursuant to Section 67-4a-1006 and the procedures and standards of this Part.

KEY: adjudicative procedures, state treasurer, unclaimed property
Date of Enactment or Last Substantive Amendment: [~~January 22,~~] 2020
Authorizing, and Implemented or Interpreted Law: 67-4a-404, 67-4a-610 and 67-4a-1006

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1-41**	**Filing No. 52552**

Agency Information

1. Department:	Treasurer
Agency:	Unclaimed Property
Room no.:	Suite #102
Building:	RC2
Street address:	168 N 1950 W
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 140530
City, state, zip:	Salt Lake City, UT 84114-0530

Contact person(s):		
Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Securities Sale and Claims
3. Purpose of the new rule or reason for the change:
Comments from the public prompted the amendment of this section.
4. Summary of the new rule or change:
This rule clarifies special situations where the administrator may wish to liquidate securities prior to the 3-year holding period, i.e., tender offers, bankruptcy, liquidation or where fees deplete the value of the asset, etc.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.
B) Local governments:
Existing processes are already in place, and these changes mainly add clarity.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
Existing processes are already in place, and these changes mainly add clarity.

F) Compliance costs for affected persons:
The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:
The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
Existing processes are already in place and these rules mainly add clarity.

B) Name and title of department head commenting on the fiscal impacts:
Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-41. Securities Sale and Claims.

[~~(1) Sale of securities.~~

~~(a) The administrator may not sell a security prior to attempting to provide notice as provided for in Section 67-4a-503 of the Act.~~

~~(b) Unless the administrator reasonably determines it would be in the best interests of the owner for the sale to occur sooner, the administrator may not sell or otherwise liquidate a security until 3 years after the administrator receives the security.~~

~~(i) Examples of when it would be in the best interest of the owner for a sale of securities to occur prior to the expiration of the 3-year period include, but are not limited to: responding to a~~

~~tender offer, a bankruptcy filing, business liquidation, and instances where fees will significantly deplete the value.~~

~~(ii) If the administrator sells a security prior to the expiration of the 3-year period, then the administrator shall document in a record the reasons for the sale.~~

~~(c) Unless otherwise provided in the Act or these rules, the administrator may sell a security at any time 3 years after the administrator receives the security.~~

~~(i) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale.~~

~~(ii) The administrator may sell a security not listed on an established exchange by any commercially reasonable method.~~

~~(d) Securities will not be sold when a claim has been filed with the administrator by an apparent owner for such securities.~~

~~(i) Upon denial of a claim, the administrator may dispose of the securities as provided in the Act and these rules.~~

~~(ii) The administrator may also dispose of the securities as provided in the Act and this Part if, after being requested by the administrator, the apparent owner fails to provide necessary and sufficient information to allow the administrator to transfer the securities within 30 days of the administrator's request.~~

~~(2) Recovery of securities or value by owner.~~

~~(a) If the administrator sells a security before the expiration of 3 years after delivery of the security to the administrator, an apparent owner that files a valid claim under the Act for the security before the 3-year period expires is entitled, at the option of the owner, to receive:~~

~~(i) Replacement of the security;~~

~~(ii) The market value of the security at the time the claim is filed, plus dividends, interest, and other increments on the security up to the time the claim is paid; or~~

~~(iii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.~~

~~(b) Replacement of the security or calculation of market value under (1) must take into account a stock split, reverse stock split, stock dividend, or similar corporate action.~~

~~(c) A person that makes a valid claim under the Act for a security after expiration of 3 years after delivery of the security to the administrator is entitled to receive:~~

~~(i) The security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increments on the security up to the time the administrator delivers the security to the person; or~~

~~(ii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.~~]

(1) Sale of securities.

(a) The administrator may not sell a security prior to attempting to provide notice as provided for in Section 67-4a-503 of the Act.

(b) Unless the administrator reasonably determines it would be in the best interests of the owner for the sale to occur sooner, the administrator may not sell or otherwise liquidate a security until 3 years after the administrator receives the security.

(i) Examples of when it would be in the best interest of the owner for a sale of securities to occur prior to the expiration of the 3-year period include, but are not limited to: responding to a tender offer, a bankruptcy filing, business liquidation, and instances where fees will significantly deplete the value.

(ii) If the administrator sells a security prior to the expiration of the 3-year period, then the administrator shall document in a record the reasons for the sale.

(c) Unless otherwise provided in the Act or these rules, the administrator may sell a security at any time 3 years after the administrator receives the security.

(i) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale.

(ii) The administrator may sell a security not listed on an established exchange by any commercially reasonable method.

(d) Securities will not be sold when a claim has been filed with the administrator by an apparent owner for such securities.

(i) Upon denial of a claim, the administrator may dispose of the securities as provided in the Act and these rules.

(ii) The administrator may also dispose of the securities as provided in the Act and this Part if, after being requested by the administrator, the apparent owner fails to provide necessary and sufficient information to allow the administrator to transfer the securities within 30 days of the administrator's request.

(2) Recovery of securities or value by owner.

(a) If the administrator sells a security before the expiration of 3 years after delivery of the security to the administrator, an apparent owner that files a valid claim under the Act for the security before the 3-year period expires is entitled, at the option of the owner, to receive:

(i) Replacement of the security;

(ii) The market value of the security at the time the claim is filed, plus dividends, interest, and other increments on the security up to the time the claim is paid; or

(iii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.

(b) Replacement of the security or calculation of market value under (1) must take into account a stock split, reverse stock split, stock dividend, or similar corporate action.

(c) A person that makes a valid claim under the Act for a security after expiration of 3 years after delivery of the security to the administrator is entitled to receive:

(i) The security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increments on the security up to the time the administrator delivers the security to the person; or

(ii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.

KEY: adjudicative procedures, state treasurer, unclaimed property

Date of Enactment or Last Substantive Amendment: [~~January 22,~~]2020

Authorizing, and Implemented or Interpreted Law: 67-4a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R966-1-51**	**Filing No. 52553**

Agency Information

1. Department:	Treasurer	
Agency:	Unclaimed Property	
Room no.:	Suite #102	
Building:	RC2	
Street address:	168 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 140530	
City, state, zip:	Salt Lake City, UT 84114-0530	
Contact person(s):		
Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Periods of Limitation and Repose
3. Purpose of the new rule or reason for the change:
Comments from the public prompted the changes to this section.
4. Summary of the new rule or change:
This amendment clarifies rule enumerates standards for the conduct of contract auditors, describes enforcement actions, and processes for encouraging compliance with the Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Existing processes are already in place, and these changes mainly add clarity to how they are utilized to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently.
B) Local governments:
Existing processes are already in place, and these changes mainly add clarity.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
Existing processes are already in place, and these changes mainly add clarity.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
Existing processes are already in place, and these changes mainly add clarity.
F) Compliance costs for affected persons:
The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence requirements.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2020**	**FY2021**	**FY2022**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:
The Administrator of the Utah Unclaimed Property Division, Dennis Johnston, has reviewed and approved this fiscal analysis.
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
Existing processes are already in place and these changes mainly add clarity.
B) Name and title of department head commenting on the fiscal impacts:
Dennis Johnston, Administrator

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 67, Chapter 4a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/31/2020

10. This rule change MAY become effective on:	04/07/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Dennis Johnston, Administrator	**Date:**	02/14/2020

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-51. Periods of Limitation and Repose.

~~[(1) The language of Section 67-4a-610 of the Act comes from Section 19(b) of the 1995 Uniform Unclaimed Property Act promulgated by the Uniform Law Commission. The official comments to the 1995 Uniform Unclaimed Property Act note that this provision parallels the Internal Revenue Code, 26 U.S.C. Subsection 6501(c). The official comments further note that as "the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, willfully or otherwise, cannot expect the protection of the stated limitations period."~~

~~(2) Pursuant to Section 67-4a-610(4) of the Act an action or proceeding may not be maintained by the administrator to enforce this Act in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property.~~

~~(3) The 10-year period of limitation is tolled:~~

~~(a) If the holder did not specifically identify the property in a report filed with the administrator or provide other express notice to the administrator; or~~

~~(b) By the filing of a report that is fraudulent.~~

~~(4) Notwithstanding the tolling of the 10-year period of limitation because of a failure of a holder to specifically identify property in a report filed with the administrator or provide other express notice to the administrator, the administrator will not maintain an action in regard to the reporting, delivery, or payment of property more than 10 years after such property should have been reported and remitted to the administrator if all of the following apply:~~

~~(a) The holder has filed reports with the administrator for the past 10 years;~~

~~(b) The holder agrees in writing to file all reports required by the Act, including providing express notice to the administrator of any future disputes concerning the reporting of property;~~

~~(c) The total amount of property, excluding any interest or penalties which the administrator could impose under the Act, is less than $2,500 or is otherwise de minimis as reasonably determined by the administrator; and the administrator determines that the holder acted in good faith and without negligence.~~](1) The language of Section 67-4a-610 comes from Section 19(b) of the 1995 Uniform Unclaimed Property Act promulgated by the Uniform Law Commission. The official comments to the 1995 Uniform Unclaimed Property Act note that this provision parallels the Internal Revenue Code, 26 U.S.C. Subsection 6501(c). The official comments further note that as "the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, willfully or otherwise, cannot expect the protection of the stated limitations period."

(2) Pursuant to Section 67-4a-610(2) an action or proceeding may not be maintained by the administrator to enforce this Act in regard to the reporting, delivery, or payment of property more than five years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property.

(3) The five-year period of limitation is tolled:

(a) If the holder did not specifically identify the property in a report filed with the administrator or provide other express notice to the administrator; or

(b) By the filing of a report that is fraudulent.

KEY: adjudicative procedures, state treasurer, unclaimed property

Date of Enactment or Last Substantive Amendment: [~~January 22,~~] 2020

Authorizing, and Implemented or Interpreted Law: 67-4a

End of the Notices of Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (**. . . . . .**) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	**R68-28**	**Filing No. 52546**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 North Redwood Road	
City, state, zip:	Salt Lake City, UT 84115	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	801-538-6023	ambermbrown@utah.gov
Andrew Rigby	385-285-6347	adrigby@utah.gov
Kelly Pehrson	385-538-7102	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:	
Cannabis Processing	
3. Effective Date:	
02/07/2020	
4. Purpose of the new rule or reason for the change:	
These changes would make it easier for cannabis processors to label cannabis products for sale in Utah.	
5. Summary of the new rule or change:	
The rule changes allow for the text on labels to be at least eight point font rather than 10 point font, and removes restrictions on the processor placing a logo on a product label, as long as the logo does not obscure required information.	
6. Regular rulemaking would:	
X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of

	budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

These changes are necessary to ensure that cannabis product can be processed and packaged and ready for sale by the March 1, 2020 deadline. The changes make it slightly easier for processors to get products ready for sale while maintaining critical safety protocols.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to state budget associated with the changes.

B) Local governments:

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to local governments associated with the changes.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to small businesses associated with the changes.

D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

No costs to persons other than small businesses, non-small businesses, or state and local governments should result from the changes to the existing rule.

8. Compliance costs for affected persons:

The rule changes do not affect compliance costs for affected person.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

It is expected that this rule change will reduce the burden on cannabis processors and help them produce and package products more effectively to get safe high-quality products ready to be sold by the March 1, 2020 deadline. There should be no fiscal impact associated with this rule change.

B) Name and title of department head commenting on the fiscal impacts:

Kelly Pehrson, Interim Commissioner

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 4-41a-103(5)	Subsection 4-41a-404(3)	Subsection 4-41a-801(1)
Subsection 4-41a-701(3)	Subsection 4-2-103(1)(i)	Subsection 4-41a-405(2)(b)(iv)
Subsection 4-41a-302(3)(b)(ii)		

Agency Authorization Information

Agency head or designee, and title:	Kelly Pehrson, Interim Commissioner	**Date:**	02/07/2020

R68. Agriculture and Food, Plant Industry.
R68-28. Cannabis Processing.
R68-28-1. Authority and Purpose.

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis processing license.

R68-28-2. Definitions.

1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

2a) "Cannabis" means any part of a marijuana plant;

b) "cannabis" does not mean, for the purposes of this rule, industrial hemp.

3) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Department" means the Utah Department of Agriculture and Food.

5) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

6) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

7) "Cannabis processing facility agent" means an individual who:

a) is an employee of a cannabis processing facility; and

b) holds a valid cannabis production establishment agent registration card.

8) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

9) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

R68-28-3. Cannabis Processing Facility License.

1) A Tier 1 cannabis processing facility license allows the licensee to receive cannabis from a licensed cannabis cultivation facility or to accept THC or THC byproduct from a Utah licensed cannabis processing facility or industrial hemp processor.

2) A Tier 1 cannabis processing facility license allows the licensee to process, manufacture, dry, cure, package, and label cannabis and cannabis products for sale or transfer to another cannabis processing facility, a medical cannabis pharmacy, or the state central fill medical cannabis pharmacy.

3) A Tier 2 cannabis processing facility license allows the licensee to receive cannabis from a licensed cannabis cultivation facility or a cannabis processing facility.

4) A Tier 2 cannabis processing facility allows for the licensee to package and label cannabis and cannabis products for sale or transfer to another cannabis processing facility, a medical cannabis pharmacy, or the state central fill medical cannabis pharmacy.

5) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

6) Prior to approving an application, the department may contact the applicant and request additional supporting documentation or information.

7) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

8) Each cannabis processing facility license shall expire on December 31st.

9) An application for renewals shall be submitted to the department by December 1st.

10) If the renewal application is not submitted by December 31st the licensee may not continue to operate.

11) A license may not be sold or transferred.

R68-28-4. Cannabis Processing Facility Requirements.

1) A cannabis processing facility operating plan shall contain a blue print of the facility containing the following information:

a) the square footage of the areas where cannabis is to be extracted;

b) the square footage of the areas where cannabis or cannabis products are to be packaged and labeled;

c) the square footage of the areas where cannabis products are manufactured;

d) the square footage of the area where cannabis products are packaged or labeled;

e) the square footage and location of storerooms for cannabis awaiting extraction;

f) the square footage and location of storerooms for cannabis awaiting further manufacturing;

g) the area where finished cannabis and cannabis products are stored;

h) the location of toilet facilities and hand washing facilities;

i) the location of a break room and location of personal belonging lockers;

j) the location of the areas to be used for loading and unloading of cannabis and cannabis products; and

k) the total square footage of the overall cannabis processing facility.

2) A cannabis processing facility shall process, manufacture, package, and label cannabis and cannabis products in accordance with 21 CFR 111, "Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operation for Dietary Supplements".

3) A cannabis processing facility shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergency at the facility.

4) A cannabis processing facility shall have a written plan to handle potential recall and destruction of cannabis due to contamination.

5) A cannabis processing facility shall use a standardized scale which is registered with the department when cannabis is:

a) packaged for sale by weight;

b) bought and sold by weight; or

c) weighed for entry into the inventory control system.

6) A cannabis processing facility shall compartmentalize all areas in the facility based on function and shall limit access between compartments.

7) A cannabis processing facility shall limit access to the compartments to the appropriate agents.

8) A cannabis processing facility creating cannabis extract shall develop standard operating procedures.

R68-28-5. Cannabis Extraction Requirements.

1) A cannabis processing facility shall ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least ninety-nine percent purity.

2) A cannabis processing facility shall use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control all sources of ignition where a flammable atmosphere is or may be present.

3) A cannabis processing facility using carbon dioxide (CO_2) gas extraction system shall use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch and CO_2 shall be at least ninety-nine percent purity.

4) Closed loop systems for hydrocarbon or CO_2 extraction systems shall be commercially manufactured and bear a permanently affixed and visible serial number.

5) A cannabis processing facility using a closed loop system shall, upon request, provide the department with certification from a licensed engineer stating the system is:

a) safe for its intended use;

b) commercially manufactured, and

c) built to codes of recognized and generally accepted good engineering practices, such as:

i) the American Society of Mechanical Engineers (ASME);

ii) American National Standards Institute (ANSI);

iii) Underwriters Laboratories (UL); or

iv) The American Society for Testing and Materials (ASTM).

6) The certification document shall contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

7) A cannabis processing facility may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

8) A cannabis processing facility shall remove all ethanol from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

9) A cannabis processing facility may use heat, screens, presses, steam distillation, ice water, and other mechanical methods which do not employ solvents or gases.

10) A cannabis establishment agent using solvents or gases in a closed loop system shall be fully trained on how to use the system and have direct access to applicable material safety data sheets.

11) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in Utah Admin. Code R68-29.

R68-28-6. Security Requirements.

1) At a minimum, each cannabis processing facility shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed cannabis processing facility shall have complete video surveillance system:

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days.

3) All cameras shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

4) Controlled areas included:

a) all entrances and exits, or ingress and egress vantage points;

b) all areas where cannabis or cannabis products are stored,

c) all areas where cannabis or cannabis products are extracted,

d) all areas where cannabis or cannabis products are manufactured, packaged, or labeled; and

e) all areas where cannabis waste is being moved, processed, stored or destroyed.

5) All cameras shall record continuously.

6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Any gate or entry point must be lighted in low-light conditions sufficient to record activity occurring.

9) All visitors to a cannabis processing facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

10) All visitors shall be escorted by a cannabis processing facility agent at all times while in the facility.

11) A cannabis processing facility shall keep and maintain a visitors log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

12) The cannabis processing facility shall keep the visitors log for a minimum of a year.

13) The cannabis processing facility shall make the visitor log shall available to the department upon request.

R68-28-7. Inventory Control.

1) Every batch or lot of cannabis, cannabis extract, cannabis product, test sample, or cannabis waste shall have a unique identifier in the inventory control system.

2) Every batch or lot of cannabis, cannabis extract, cannabis product, sample, or cannabis waste shall be traceable to the lot used as the base material from a cannabis cultivation facility.

3) Unique identification numbers may not be reused.

4) Each batch or lot of cannabis, cannabis extract, cannabis product, test sample, or cannabis waste that has been issued a unique identification number shall have a physical tag placed on it with the unique identification number.

5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) date and time cannabis, cannabis extract, or cannabis product is being transported to a cannabis production establishment, medical cannabis pharmacy, or the state central fill medical cannabis pharmacy;

b) all samples used for testing and the test results;

c) a complete inventory of cannabis, cannabis extract cannabis product, trim, or other plant material;

d) cannabis product by unit count;

e) weight per unit of product;

f) weight and disposal of cannabis waste materials;

g) the identity of who disposed of the cannabis waste and the location of the waste receptacles; and

h) theft or loss or suspected theft or loss of cannabis, cannabis extract, or cannabis product.

7) A receiving cannabis processing facility shall document in the inventory tracking system any cannabis, cannabis extract, or cannabis product received, and any difference between the quality specified in the transport and the quantities received.

8) A cannabis processing facility shall immediately upon receipt of THC extract from a licensed industrial hemp processor enter the following information into the inventory control system:

a) the amount of THC extract received;

b) the name, address, and licensing number of the industrial hemp processor;

c) the weight per unit of product received; and

d) the assigned unique identification number.

R68-28-8. Cannabis Processing Facility Agents.

1) A cannabis processing facility shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the registration fee.

3) The cannabis processing facility agent registration card shall contain:

a) the agent's full name;

b) the name of the cannabis processing establishment;

c) the job title or position of the agent; and

d) a photograph of the agent.

4) A cannabis processing facility is responsible to ensure that all agents have received:

a) the department approved training as specified in Utah Code 4-41a-301; and

b) any task specific training as outlined in the operating plan submitted to the department.

5) A cannabis processing facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis production establishment agents shall have their state issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis processing facility.

R68-28-9. Minimum Storage and Handling Requirements.

1) A cannabis processing facility shall have separate storage for cannabis, cannabis extract, or cannabis products that are outdated, damaged, deteriorated, misbranded, or adulterated, or whose containers or packaging have been opened or breached until the cannabis, cannabis extract, or cannabis products are destroyed.

2) All cannabis, cannabis extract, and cannabis products shall be stored at least six inches off the ground.

3) Storage areas shall:

a) be maintained in a clean and orderly condition; and

b) be free from infestation by insects, rodents, birds, or vermin.

4) A cannabis processing facility shall store all cannabis, cannabis extract, or cannabis products in process in a manner so as to prevent diversion, theft, or loss.

5) A cannabis processing facility shall make cannabis, cannabis extract, or cannabis product accessible only to the minimum number of specifically authorized employees essential for efficient operation and shall return the cannabis or cannabis extract to its secure location immediately after completion of the process or at the end of the scheduled business day.

6) If a manufacturing process cannot be completed at the end of a working day, the processor shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

R68-28-10. Product Appearance and Flavor.

1) A cannabis processing facility may not produce a cannabis product that is designed to mimic a candy product.

2) A cannabis processing facility may not produce a product that includes a candy-like flavor or another flavor the facility knows or should know appeals to children.

3) A cannabis processing facility may use only the following artificial flavors:

a) apple;

b) banana;

c) cherry;

d) grape;

e) lemon;

f) mint;

g) orange;

h) raspberry;

i) strawberry;

j) vanilla; or

k) watermelon.

4) Cannabis or cannabis product may retain the natural flavor provided the flavor is not candy-like or another flavor the facility knows or should know appeals to children.

5) A cannabis processing facility may not shape a cannabis product in any way to appeal to children.

R68-28-11. Packaging of Cannabis and Cannabis Product.

1) A cannabis processing facility shall package cannabis or cannabis products in accordance with this rule and Utah Code 4-41a-602 prior to transportation to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

2) Cannabis and cannabis product shall be packaged in child-resistant packaging in accordance with 16 C.F.R. Section 1700.

3) Any container or packaging containing cannabis or cannabis product shall protect the product from contamination and shall not impart any toxic or deleterious substance to the cannabis or cannabis product.

R68-28-12. Labeling of Cannabis and Cannabis Product.

1) The text used on all labeling shall be printed in at least [~~10~~]8-point font and may not be in italics.

2) A cannabis processing facility shall label all cannabis and cannabis product before it sells the cannabis or cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

3) The label shall be securely affixed to the package and be in legible English.

4) A label for cannabis flower shall include the following information in the order as listed:

a) the name of the cannabis cultivation facility followed by the name of cannabis processing facility with the cannabis processing establishment licensing number;

b) the lot number;

c) the date of harvest;

d) the date of final testing;

e) the batch number;

f) the date on which the product was packaged;

g) the cannabinoid profile, potency levels, and terpenoid profile as determined by the independent testing laboratory,

h) the expiration date; and

i) the quantity of cannabis being sold.

5) THC potency levels for cannabis flower shall be total potential THC and not include any other calculated level of THC.

6) A label for cannabis products shall include the following information in the order listed:

a) the name of the cannabis processing facility and licensing number;

b) the batch number;

c) the date of production;

d) the date of the final testing;

e) the date on which the product was packaged;

f) the cannabinoid profile, potency level; and terpenoid profile as determined by the independent testing laboratory;

g) the expiration date;

h) the total amount of THC measured in milligrams;

i) a list of all ingredients and all major food allergens as identified in 21 U.S.C. 343;

j) the net weight of the product; and

k) a disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process or any other compound added to the concentrated cannabis.

7) All cannabis or cannabis product labels shall contain the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a qualified medical provider."

8) A cannabis processing facility may include a [~~small~~]logo or brand name on[~~at the end of~~] the label, as long as it does not obscure the information required on the label.

9) No other information , illustrations, or depiction shall appear on the label.

R68-28-13. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

b) physical address and license number of the receiving location;

c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the receiving cannabis processing establishment, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy.

5) The receiving cannabis processing facility, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving cannabis processing facility, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy shall document at time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transportation, cannabis shall be:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the cannabis processing facility may occupy a transporting vehicle.

R68-28-14. Recall Protocol.

1) The department may initiate a recall of cannabis or cannabis products if :

a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;

b) evidence exists that residual solvents are present on or in cannabis or cannabis products;

c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or

d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.

2) A cannabis processing facility's recall plan shall include, at a minimum:

a) designation of at least one member of the staff who serves as the recall coordinator;

b) procedures for identifying and isolating product to prevent or minimize distribution to patients;

c) procedures to retrieve and destroy product; and

d) a communications plan to notify those affected by the recall.

3) The cannabis processing facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis processing facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-28-15. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) All cannabis waste shall be rendered unusable prior to leaving the cannabis processing facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind and incorporate with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-28-16. Change in Operation Plans.

1) A cannabis processing facility shall submit a notice, on a form provided by the department, prior to making any changes to:

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or

e) change to the number of production lines.

2) A cannabis processing facility may not implement changes to the approved operation plan without department approval.

3) The department shall respond to the request for changes within 15 business days.

4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify reason for the denial of approval for a change to the operation plan.

R68-28-17. Renewals.

1) A cannabis processing facility shall submit a notice of intent to renew and the licensing fee to the department by December 31st.

2) If the licensing fee and intent to renew are not submitted December 31st the licensee may not continue to operate.

3) The department may take into consideration violations issued in determining license renewals.

R68-28-18. Violation Categories.

1) Public Safety Violations: $3,000- $5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:

a) cannabis sold to an unlicensed source;

b) cannabis purchased from an unlicensed source;

c) refusal to allow inspection;

d) failure to comply with testing requirements;

e) a test result for high pesticide residue in the cannabis produced or cannabis product;

f) a test result for high residual solvents, heavy metal, microbials, molds, or other harmful contaminants;

g) failure to maintain required cleanliness and sanitation standards;

h) unauthorized personnel on the premises;

i) permitting criminal conduct on the premises;

j) possessing, manufacturing, or distributing cannabis products which the person knows or should know appeal to children; or

k) engaging in or permitting a violation of the Utah Code 4-41a which amounts to a public safety violation as described in this subsection.

2) Regulatory Violations: $1,000-$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:

a) failure to maintain alarm and security systems;

b) failure to keep and maintain records;

c) failure to maintain traceability;

d) failure to follow transportation requirements;

e) failure to follow the waste and disposal requirements;

f) engaging in or permitting a violation of Utah Code 4-41a or this rule which amounts to a regulatory violation as described in this subsection; or

g) failure to maintain standardized scales.

3) Licensing Violations: $500- $5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:

a) an unauthorized change to the operating plan;

b) failure to notify the department of changes to the operating plan;

c) failure to notify the department of changes to financial or voting interests of greater than 2%;

d) failure to follow the operating plan as approved by the department;

e) engaging in or permitting a violation of this rule or Utah Code 4-41a which amounts to a licensing violation as described in this subsection; or

f) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: cannabis processing, cannabis production establishment
Date of Enactment or Last Substantive Amendment: February 7, 2020
Authorizing, and Implemented or Interpreted Law: 4-41a-103(5); 4-41a-404(3); 4-41a-701(3); 4-41a-302(3)(b)(ii); 4-2-103(1)(i); 4-41a-405(2)(b)(iv); 4-41a-801(1)

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	**R68-29**	**Filing No. 52545**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 North Redwood Road	
City, state, zip:	Salt Lake City, UT 84115	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	801-538-6023	ambermbrown@utah.gov

Andrew Rigby	385-285-6347	adrigby@utah.gov
Kelly Pehrson	385-538-7102	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Quality Assurance Testing on Cannabis

3. Effective Date:

02/06/2020

4. Purpose of the new rule or reason for the change:

These changes provide specific laboratory testing guidelines and a sampling protocol to allow for the testing of cannabis, cannabis products, and cannabinoid products to ensure that products that are sold in Utah are safe and produced in accordance with state law.

5. Summary of the new rule or change:

The rule changes provide additional definitions applicable to the testing of cannabis, cannabis product, and cannabinoid product; prescribe criteria for testing for potency, water activity, and adulterants; and prescribe sampling procedures to be followed to ensure that a representative sample of products is tested.

6. Regular rulemaking would:

X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

These changes are necessary to ensure that cannabis products can be tested in accordance with state law and be ready for sale by the deadline of March 1, 2020. The changes provide specific information to ensure that testing procedures are comprehensive and clear and products are safe for human consumption.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to the state budget associated with these changes.

B) Local governments:

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to local governments associated with these changes.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

These rule changes clarify an existing rule whose costs have already been determined. There are no costs to small businesses associated with these changes.

D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no cost to persons other than small businesses, non-small businesses, or state and local governments associated with these changes.

8. Compliance costs for affected persons:

The rule changes do not affect compliance costs for affected person.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

It is expected that this rule change will allow cannabis testing laboratories to ensure products are tested for safety and potency in accordance with state law. Providing clear and comprehensive guidelines will help producers get good products to market faster. The proposed changes do not add any additional costs to the program and just clarifies the existing rule.

B) Name and title of department head commenting on the fiscal impacts:

Kelly Pehrson, Interim Commissioner

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 4-41-403(1)	Subsection 4-41a-701(3)	

Agency Authorization Information

Agency head or designee, and title:	Kelly Pehrson, Interim Commissioner	**Date:**	02/06/2020

R68. Agriculture and Food, Plant Industry.
R68-29. Quality Assurance Testing on Cannabis.
R68-29-1. Authority and Purpose.

1) Pursuant to sections 4-41-403(1) and 4-41a-701(3), this rule establishes the standards for [~~cannabis and cannabis product testing and sets limits for pesticides, residual solvents, heavy metals, and other contaminants.~~]cannabis, industrial hemp, cannabis

product, and cannabinoid product potency testing and sets limits for water activity, foreign matter, microbiological life, pesticides, residual solvents, heavy metals, and mycotoxins.

R68-29-2. Definitions.

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

a) pesticides,

b) heavy metals,

c) solvents,

d) microbiological life,

e) toxins, or

f) foreign matter.

[~~1~~]2) "Analyte" means a substance or chemical component that is undergoing analysis.

[~~2~~]3) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1), or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

[~~3~~]5) "Cannabinoid product" means [~~a chemical compound extracted from a hemp product that~~]a product containing material derived from hemp that:

a) is processed into a medicinal[~~medical~~] dosage form; and

b) contains less than 0.3% tetrahydrocannabinol by dry weight.

[~~4~~]6) "Cannabis" means any part of the marijuana plant.

[~~5~~]7) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

[~~6~~]8) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis extract; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

[~~7~~]9) "Cannabis product" means a product that:

a) is intended for human use; and

b) contains cannabis or tetrahydrocannabinol.

10) "CBD" means cannabidiol (CAS 13956-29-1).

11) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

12) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.

[~~8~~]13) "Department" means the Utah Department of Agriculture and Food.

14) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

15) "Foreign matter" means:

a) any matter which is present in a cannabis lot that is not a part of the cannabis plant, or

b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient.

16) "Industrial hemp" means a cannabis plant which contains less than 0.3% total THC by dry weight.

17) "Hot crude oil" means a cannabinoid extract derived from industrial hemp with greater than 0.3% THC by mass.

[~~9~~]18) "Lot" means the quantity of:

a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis [~~plats~~]plants produced on a particular date and time, following clean up until the next clean up.

[~~10~~]19) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

[~~11~~]20) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the [~~pesticide's~~]application or effect of a pesticide.

21) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis lot, cannabis product, hot crude oil, or industrial hemp from a cannabis production establishment who is:

a) an employee of the department;

b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or

c) a person authorized by the department to perform sampling.

22) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.

23) "THC" means delta-9-tetrahydrocannabinoid (CAS 1972-08-3).

24) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

25) "Total CBD" means the sum of the determined amounts of CBD and CBDA.

26) "Total THC" means the sum of the determined amounts of THC and THCA.

27) "Unit" means:

a) one tablet;

b) one capsule;

c) 10 ml of concentrated oil or one vape cartridge;

d) 10 ml of liquid extract or suspension;

e) 0.5 oz of topical preparation;

f) one patch or 0.5 oz of transdermal preparation;

g) 10 ml of sublingual preparation; or

h) one gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or rectangular cuboid shape; or

g) each individual portion of an individually packaged product.

28) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.

R68-29-3. Required Cannabis and Cannabis Product Tests.

1) Prior to the transfer of [~~cannabis~~]a cannabis lot, a cannabis cultivation facility shall have an independent cannabis laboratory test a representative sample of [~~a cannabis lot for microbiological contaminants, heavy metals, and pesticide residue.~~]the lot for potency, water activity, and adulterants, with the exception of solvents.

[~~2) Prior to offering cannabis or a cannabis product for sale, a cannabis processing facility shall have an independent cannabis laboratory test a representative sample of a batch or lot for microbiological contaminants, heavy metals, pesticide, and residual solvent.~~]

2) A cannabis lot that fails any of the required adulterant testing standards may be remediated by the cannabis cultivation facility or a cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

3) Prior to the introduction or transfer of hot crude oil or industrial hemp to a cannabis production establishment the owner shall have an independent cannabis laboratory test a representative sample of the material for potency, water activity, and adulterants.

[~~3) A cannabinoid product shall be tested by and independent testing laboratory for microbiological contaminants, heavy metals, pesticides, and residual solvents prior to the products being registered with the department in accordance with Utah Code 4-41-402~~]

4) Prior to offering a cannabis or cannabis product batch for sale the cannabis processing facility shall have the product tested for potency, water activity, and adulterants.

[~~4) The department may require an independent laboratory to test for toxins.~~]

5) A batch of cannabis or cannabis product that fails a required testing standard may be remediated by a cannabis processing facility if:

a) the cannabis processing facility submits a remediation plan; and

b) the remediation plan is approved by the department.

6) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

7) A remediation plan shall be carried out and the cannabis lot or cannabis product batch shall be prepared for resampling within 60 days of department approval of the remediation plan.

8) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

9) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed.

[~~5) If the sample of cannabis does not pass the toxin, heavy metal, pesticide, or resolvent test based on the standards set forth in this rule, the cannabis cultivation facility or shall dispose of the entire batch or lot from which the sample was taken.~~

~~6) If the sample of cannabis does not pass the microbiological test based on the standards set forth in this rule, the cannabis may be used to make a carbon dioxide (CO2) or solvent-based extract.~~

~~7) If the sample of a cannabis product does not pass the microbiological, toxin, heavy metal, pesticide, or residual solvent test based on the standards set forth in this rule, the cannabis processing facility shall dispose of the entire batch or lot from which the sample was taken.~~]

10) A cannabinoid product shall be tested by an independent testing laboratory for microbiological contaminants, heavy metals, pesticides, and residual solvents prior to the product being registered with the department in accordance with Section 4-41-402

11) Product tested by the department may be offered for sale without all of the required testing if:

a) the product packaging discloses the tests that were not performed; and

b) the disclosure is contained on a sticker provided by the department.

12) In the event that tests results cannot be retained in the Inventory Control System, the laboratory shall:

a) keep a record of all test results;

b) issue a certificate of analysis for all required tests; and

c) retain a copy of the certificate of analysis on the laboratory premises.

R68-29-4. Sampling Cannabis and Cannabis Products.

1) The entity that requests testing of a cannabis lot or cannabis product batch shall make the entirety of the cannabis lot or cannabis batch available to the sampling technician.

2) The cannabis lot or cannabis batch being sampled shall be contained in a single location and physically separated from other cannabis lots or cannabis batches.

3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.

4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the collection of the sample.

5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, which is ISO 17025 compliant, maintained by the laboratory that will perform the testing.

6) When collecting the representative sample, the sampling technician shall:

a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;

b) place tamper proof tape on the container; and

c) appropriately label the sample according to R68-30-6.

7) For cannabis lots the minimum representative sample shall be taken according to the following schedule:

a) 8 subunits weighing at least 0.5 grams each for lots weighing 10 pounds or less;

b) 16 subunits weighing at least 0.5 grams each for lots weighing 10.01-20 pounds;

c) 22 subunits weighing at least 0.5 grams each for lots weighing 20.01-30 pounds;

d) 28 subunits weighing at least 0.5 grams each for lots weighing 30.01-40 pounds;

e) 32 subunits weighing at least 0.5 grams each for lots weighing 40.01-50 pounds.

8) For cannabis products in their final product form the following minimum number of sample units must be taken:

a) four units for a sample product batch with 5-500 products;

b) six units for a sample product batch with 501-1000 products;

c) eight units for a sample product batch with 1,001-5,000 products; and

d) ten units for a sample product batch with 5,001-10,000 products.

9) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

R68-29-5. Moisture Content Testing and Water Activity Standards.

1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

R68-29-6. Foreign Matter Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

a) the sample contains foreign matter visible to the unaided human eye;

b) the sample is found to contain microscopic foreign matter estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

c) foreign matter is found which is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R68-29-7. Potency Testing.

1) A lot or batch of cannabis, cannabis product, cannabinoid product, or hot crude oil shall have their potency determined and listed on a COA as total THC and total CBD.

2) A sample and related lot or batch of hemp or cannabinoid product fail quality assurance testing if the total THC is found to be greater than 0.3% of the product mass.

R68-29-[4]8. Microbiological Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Section 1111 of the United States Pharmacopeia.

2) The Department adopts by reference Section 1111 of the United States Pharmacopeia (May 1,2012).

R68-29-[5]9. [~~Standards for Pesticides~~]Pesticide Standards.

1) Only pesticides allowed by the department may be used in the production of cannabis, cannabis products, or cannabinoid products.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under R68-29-5(1) and is above the action levels provided in R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis, [~~or~~]cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth on the table below.

Table 1
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazon	78587-05-0	1
Imazal	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

R68-29-[6]10. [Solvents]Residual Solvent Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in the table below[.] unless the solvent is:

a) a component of the product formulation,

b) listed as an ingredient, and

c) generally considered to be safe for the intended form of use.

Table 2
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS)Registry number	Action level Φg/g
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
[2-Butanol]2-Butanone	78-93-3	5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylf[o]rmamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

2) Xylenes is a combination of the following:
a) 1,2-dimethylbenzene;
b) 1,3-dimethylbenzene;
c) 1,4-dimethylbenzene; and
d) ethyl benzene.

R68-29-[7]11. Heavy [Metals]Metal Standards.

A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Table 3
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

[R68-29.8]R68-29-12. Mycotoxin Standards.

A sample and related lot or batch of cannabis, [or]cannabis product, or cannabinoid product fail quality assurance testing for mycotoxin if the results exceed the limits provided in the table below.

Table 4
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1,and Aflatoxin G2	<20 ΦG/kg of substance
Ochratoxin A.	<20 ΦG/kg of substance

KEY: cannabis testing, quality assurance, cannabis laboratory
Date of Enactment or Last Substantive Amendment: February 6, 2020
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41-403(1)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at https://rules.utah.gov/. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R414-19A**	**Filing No. 50972**

Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 North 1460 West
City, state, zip:	Salt Lake City, UT
Mailing address:	PO Box 143102
City, state, zip:	Salt Lake City, UT, 84114-3102
Contact person(s):	

Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

Coverage for Dialysis Services by an End Stage Renal Disease Facility

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 26-1-5 grants the Department of Health (Department) the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program while Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. Additionally, 42 CFR 440.90 authorizes outpatient dialysis furnished by or under the direction of a physician.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department did not receive any written or oral comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department will continue this rule because it implements dialysis services for Medicaid members, continues coverage for members who do not qualify under Medicare, defines and sets forth standards of care for end-stage renal disease (ESRD) facilities, and clarifies coverage and reimbursement for facilities that provide ESRD treatments.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	02/13/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-140**	**Filing No. 51365**

Agency Information

1. Department:	Insurance

Agency:	Administration		
Room no.:	3110		
Building:	State Office Building		
Street address:	450 N. State St.		
City, state, zip:	Salt Lake City, UT 84114		
Mailing address:	PO Box 146901		
City, state, zip:	Salt Lake City, UT 84114-6901		
Contact person(s):			
Name:	**Phone:**	**Email:**	
Steve Gooch	801-538-3803	sgooch@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
Reference Filings of Rate Service Organization Prospective Loss Costs
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 31A-2-201(1) and 31A-2-201(3)(a) authorize the Insurance Commissioner to adopt rules to implement the provisions of the Insurance Code, Title 31A. This rule focuses on the requirements for a rate service organization filing loss cost factors for property and casualty insurers as specified in Sections 31A-19a-203 and 31A-19a-205.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
It is important that this rule continue in force. This rule provides instruction to rate service organizations concerning the filings they will use in Utah to be in compliance with the Insurance Code. It is a key component in the regulation of loss cost filings developed by all rate service organizations, such as the National Council on Compensation Insurance (NCCI) and the Insurance Service Office (ISO), that are licensed to do business in Utah. This rule applies to all lines of property and casualty insurance coverage.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	**Date:**	02/13/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-15**	**Filing No. 51737**

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	2110	
Building:	Natural Resources Complex	
Street address:	1594 W. North Temple	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Closure of Gunnison, Cub and Hat Islands
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 23-21a-3, the Wildlife Board and Division of Wildlife Resources (Division) are authorized to provide for the management of Gunnison, Cub and Hat Islands for the protection and perpetuation of the American white pelican.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division has not received any written comments regarding this rule. Any comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees

with comments in opposition to this rule, if any:
This rule places restrictions on access on, around, and over these islands. This protection from disturbance will ensure the continued use of these areas and result in successful brood rearing by the birds. The other habitat needs of these colonial nesting waterbirds are being met and their populations are healthy at this time. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michal Fowlks, Director	**Date:**	02/04/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-21**	**Filing No. 51745**

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	2110
Building:	Natural Resources Complex
Street address:	1594 W. North Temple
City, state, zip:	Salt Lake City, UT 84114
Mailing address:	PO Box 146301
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
Cooperative Wildlife Management Units for Small Game and Waterfowl

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 23-21a-3, the Wildlife Board and Division of Wildlife Resources (Division) are authorized to provide rules applicable to cooperative wildlife management units organized for the hunting of small game and waterfowl.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division has not received any written comments regarding this rule. Any comments received in opposition to this rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R657-21 provides the procedures, standards, and requirements for the establishment of a cooperative wildlife management unit. The provisions adopted in this rule are effective in providing the standards and requirements for establishing cooperative wildlife management units and providing adequate protection to landowners who open their lands for hunting and provide additional hunting opportunities. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Michal Fowlks, Director	**Date:**	02/04/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-22**	**Filing No. 52029**

Agency Information

1. Department:	School and Institutional Trust Lands
Agency:	Administration
Room no.:	Suite 500
Street address:	675 East 500 South
City, state, zip:	Salt Lake City, UT 84102-2818
Mailing address:	675 East 500 South, Suite 500
City, state, zip:	Salt Lake City, UT 84102-2818
Contact person(s):	

Name:	Phone:	Email:
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

Bituminous-Asphaltic Sands and Oil Shale Resources
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases and management of trust-owned lands and mineral resources.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The School and Institutional Trust Lands Administration manages over four million acres of subsurface mineral rights located throughout the . This rule applies to the management of the bituminous-asphaltic sands and oil shale resources for the benefit of the respective beneficiaries and sets forth the guidelines by which the agency conducts business and the customer can follow. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**:	01/17/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-23**	**Filing No. 52032**

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room no.:	Suite 500	
Street address:	675 East 500 South	
City, state, zip:	Salt Lake City, UT 84102-2818	
Mailing address:	675 East 500 South, Suite 500	
City, state, zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Sand, Gravel and Cinders Permits
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of surface and subsurface leases and the management of trust-owned lands and resources.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The School and Institutional Trust Lands Administration manage over four million acres of surface and subsurface lands and resources located throughout the . This rule applies to the management of the sand, gravel, and cinders resources and establishes the guidelines by which the agency conducts business with the customers for these resources. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**	01/17/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-24**	**Filing No. 52033**

Agency Information

1. Department:	School and Institutional Trust Lands
Agency:	Administration
Room no.:	Suite 500
Street address:	675 East 500 South

City, state, zip:	Salt Lake City, UT 84102-2818	
Mailing address:	675 East 500 South, Suite 500	
City, state, zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral and material leases and permits and the management of trust-owned lands and resources.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides the general provisions that apply to multiple commodities in an "umbrella-type" rule. It provides for clarity for the community that is subject to these processes and eliminates the need to include these same provisions in each separate rule for the various commodities. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**	01/17/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	**R850-25**	**Filing No. 52045**

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room no.:	Suite 500	
Street address:	675 East 500 South	
City, state, zip:	Salt Lake City, UT 84102-2818	
Mailing address:	675 East 500 South, Suite 500	
City, state, zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Mineral Leases and Materials Permits
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of leases and the management of trust-owned lands and resources.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides the necessary guidelines for the issuance of leases and permits for the commodities covered under this rule. It also provides for the efficient management of the resources for the best interests of the trust beneficiaries. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**	01/17/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-26**	**Filing No. 52036**

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room no.:	Suite 500	
Street address:	675 East 500 South	
City, state, zip:	Salt Lake City, UT 84102-2818	
Mailing address:	675 East 500 South, Suite 500	
City, state, zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

Coal Leases

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration (Trust) to establish rules for the issuance of leases and the management of trust-owned lands and resources.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received by the Trust for this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is vital to the management of the Trust's coal resources and the issuance of leases. It provides the guidelines and procedures to be followed by the agency and third-parties, which are consistent and in the best interests of the Trust beneficiaries. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**	01/17/2020

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-27**	**Filing No. 52037**

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room no.:	Suite 500	
Street address:	675 East 500 South	
City, state, zip:	Salt Lake City, UT 84102-2818	
Mailing address:	675 East 500 South, Suite 500	
City, state, zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Faddis	801-538-5150	tomfaddis@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

Geothermal Steam

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq., authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of leases and the management of trust-owned lands and resources.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received by the agency for this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides the commodity-specific provisions for the leasing and management of geothermal steam resources on trust-owned lands throughout the . It sets forth the guidelines and procedures whereby the agency may conduct business and that the customer may follow in relation to this resource. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	David Ure, Director	**Date**	01/17/2020

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION** (**EXTENSION**) with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	**R305-5**	**Filing No. 50565**

Agency Information

1. Department:	Environmental Quality	
Agency:	Administration	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116-3085	
Mailing address:	PO BOX 144810	
City, state, zip:	Salt Lake City, UT 84114-4810	
Contact person(s):		
Name:	**Phone:**	**Email:**
Kim Shelley	801-536-4403	kshelley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation
3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, the Department of Environmental Quality needs more time to review this rule. The new deadline is 06/08/2020.

Agency Authorization Information

Agency head or designee, and title:	Scott Baird, Executive Director	**Date:**	02/07/2020

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food
Animal Industry
No. 52469 (New Rule): R58-13. Custom Exempt Slaughter
Published: 01/15/2020
Effective: 02/24/2020

No. 52470 (New Rule): R58-25. Aerial Hunting Permits and Licenses
Published: 01/15/2020
Effective: 02/24/2020

Plant Industry
No. 52468 (New Rule): R68-31. Cannabis Licensing Process
Published: 01/15/2020
Effective: 02/24/2020

Regulatory Services
No. 52471 (New Rule): R70-570. Direct-to-Sale Farmers Market Signage
Published: 01/15/2020
Effective: 02/24/2020

Alcoholic Beverage Control
Administration
No. 52417 (Repeal): R81-1. Scope, Definitions, and General Provisions
Published: 01/01/2020
Effective: 02/25/2020

No. 52418 (Repeal): R81-2. State Stores
Published: 01/01/2020
Effective: 02/25/2020

No. 52419 (Repeal): R81-3. Package Agencies
Published: 01/01/2020
Effective: 02/25/2020

No. 52420 (Repeal): R81-4. Retail Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52421 (Repeal): R81-4a. Restaurant Liquor Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52422 (Repeal): R81-4b. Airport Lounge Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52423 (Repeal): R81-4c. Limited Restaurant Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52424 (Repeal): R81-4d. On-Premise Banquet License
Published: 01/01/2020
Effective: 02/25/2020

No. 52425 (Repeal): R81-4e. Resort Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52426 (Repeal): R81-4f. Reception Center Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52427 (Repeal): R81-5. Bar Establishment Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52428 (Repeal): R81-6. Special Use Permits
Published: 01/01/2020
Effective: 02/25/2020

No. 52429 (Repeal): R81-7. Event Permits
Published: 01/01/2020
Effective: 02/25/2020

No. 52430 (Repeal): R81-8. Manufacturing and Related Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52431 (Repeal): R81-9. Liquor Warehousing Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52432 (Repeal): R81-10. Off-Premise Beer Retailers
Published: 01/01/2020
Effective: 02/25/2020

No. 52433 (Repeal): R81-10a. Recreational Amenity On-Premise Beer Retailer Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52434 (Repeal): R81-10c. Beer-Only Restaurant Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52435 (Repeal): R81-10d. Tavern Beer Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52436 (Repeal): R81-11. Beer Wholesaler Licenses
Published: 01/01/2020
Effective: 02/25/2020

No. 52437 (Repeal): R81-12. Local Industry Representative Licenses (Distillery, Winery, Brewery)
Published: 01/01/2020
Effective: 02/25/2020

(EDITOR'S NOTE: Title R81 is removed and Alcoholic Beverage Control is now under Title R82.)

Alcoholic Beverage Control
Administration
No. 52392 (New Rule): R82-1. General
Published: 12/15/2019
Effective: 02/25/2020

No. 52393 (New Rule): R82-2. Administration
Published: 12/15/2019
Effective: 02/25/2020

No. 52394 (New Rule): R82-3. Disciplinary Actions and Enforcement
Published: 12/15/2019
Effective: 02/25/2020

No. 52395 (New Rule): R82-4. Criminal Offenses and Procedure
Published: 12/15/2019
Effective: 02/25/2020

No. 52403 (New Rule): R82-5. General Retail License Provisions
Published: 12/15/2019
Effective: 02/25/2020

No. 52405 (New Rule): R82-6. Specific Retail Provisions
Published: 12/15/2019
Effective: 02/25/2020

No. 52407 (New Rule): R82-7. Off-Premise
Published: 12/15/2019
Effective: 02/25/2020

No. 52408 (New Rule): R82-8a. Resorts
Published: 12/15/2019
Effective: 02/25/2020

No. 52409 (New Rule): R82-10. Special Use Permits
Published: 12/15/2019
Effective: 02/25/2020

No. 52411 (New Rule): R82-11. Manufacturing
Published: 12/15/2019
Effective: 02/25/2020

No. 52412 (New Rule): R82-13. Wholesaler
Published: 12/15/2019
Effective: 02/25/2020

Education
Administration
No. 52445 (Amendment): R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions
Published: 01/01/2020
Effective: 02/07/2020

No. 52446 (Amendment): R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions
Published: 01/01/2020
Effective: 02/07/2020

No. 52447 (Amendment): R277-212. UPPAC Hearing Procedures and Reports
Published: 01/01/2020
Effective: 02/07/2020

No. 52448 (Amendment): R277-213. Request for Licensure Reinstatement and Reinstatement Procedures
Published: 01/01/2020
Effective: 02/07/2020

No. 52449 (Amendment): R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions
Published: 01/01/2020
Effective: 02/07/2020

No. 52452 (Amendment): R277-502. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees
Published: 01/01/2020
Effective: 02/07/2020

No. 52458 (Amendment): R277-800. Utah Schools for the Deaf and the Blind
Published: 01/01/2020
Effective: 02/07/2020

No. 52450 (New Rule): R277-217. Educator Standards and LEA Reporting
Published: 01/01/2020
Effective: 02/07/2020

No. 52451 (New Rule): R277-316. Professional Standards and Training for Non-licensed Employees and Volunteers
Published: 01/01/2020
Effective: 02/07/2020

No. 52456 (New Rule): R277-623. School Climate Survey
Published: 01/01/2020
Effective: 02/07/2020

No. 52453 (Repeal): R277-515. Utah Educator Professional Standards
Published: 01/01/2020
Effective: 02/07/2020

No. 52454 (Repeal): R277-516. Professional Standards and Training for Non-licensed Employees and Volunteers
Published: 01/01/2020
Effective: 02/07/2020

Environmental Quality
Waste Management and Radiation Control, Radiation
No. 52329 (Amendment): R313-15. Transfer for Disposal and Manifests
Published: 12/01/2019
Effective: 02/14/2020

No. 52330 (Amendment): R313-19. Transportation
Published: 12/01/2019
Effective: 02/14/2020

No. 52331 (Amendment): R313-36. Special Requirements for Industrial Radiographic Operations
Published: 12/01/2019
Effective: 02/14/2020

Health
Child Care Center Licensing Committee
No. 52369 (Amendment): R381-60. Hourly Child Care Centers
Published: 12/15/2019
Effective: 02/25/2020

No. 52371 (Amendment): R381-100. Child Care Centers
Published: 12/15/2019
Effective: 02/25/2020

No. 52378 (Amendment): R381-70. Out of School Time Child Care Programs
Published: 12/15/2019
Effective: 02/25/2020

Disease Control and Prevention, Environmental Services
No. 52333 (Amendment): R392-302. Design, Construction and Operation of Public Pools
Published: 12/01/2019
Effective: 02/26/2020

Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health
No. 52332 (Amendment): R388-804. Special Measures for the Control of Tuberculosis
Published: 12/01/2019
Effective: 02/01/2020

Family Health and Preparedness, Child Care Licensing
No. 52372 (Amendment): R430-8. Exemptions From Child Care Licensing
Published: 12/15/2019
Effective: 02/25/2020

Family Health and Preparedness, Licensing
No. 52375 (Amendment): R432-35. Background Screening -- Health Facilities.
Published: 12/15/2019
Effective: 03/01/2020

Health Care Financing, Coverage and Reimbursement Policy
No. 52461 (Amendment): R414-312. Adult Expansion Medicaid
Published: 01/01/2020
Effective: 02/18/2020

No. 52462 (Amendment): R414-22. Administrative Sanction Procedures and Regulations
Published: 01/01/2020
Effective: 02/104/2020

Human Services
Recovery Services
No. 52438 (Amendment): R527-303. Automatic Payment Withdrawal
Published: 01/01/2020
Effective: 02/10/2020

Natural Resources
Forestry, Fire and State Lands
No. 52440 (Amendment): R652-90. Sovereign Land Management Planning
Published: 01/01/2020
Effective: 02/12/2020

No. 52416 (New Rule): R652-124. Wildland Fire Preparedness Grants
Published: 01/01/2020
Effective: 02/12/2020

Oil, Gas and Mining; Non-Coal
No. 52348 (Amendment): R647-1. Minerals Regulatory Program
Published: 12/01/2019
Effective: 02/10/2020

No. 52349 (Amendment): R647-2. Exploration
Published: 12/01/2019
Effective: 02/10/2020

No. 52350 (Amendment): R647-3. Small Mining Operations
Published: 12/01/2019
Effective: 02/10/2020

No. 52351 (Amendment): R647-4. Large Mining Operations
Published: 12/01/2019
Effective: 02/10/2020

Oil, Gas and Mining; Non-Coal
No. 52352 (Amendment): R647-5. Administrative Procedures
Published: 12/01/2019
Effective: 02/10/2020

Parks and Recreation
No. 52363 (Amendment): R651-601. Definitions as Used in These Rules
Published: 01/15/2020
Effective: 02/24/2020

No. 52364 (Amendment): R651-620. Protection of Resources Park System Property
Published: 01/15/2020
Effective: 02/24/2020

No. 52410 (Amendment): R651-601. Primary Jurisdiction Zone (PJZ)
Published: 01/15/2020
Effective: 02/24/2020

No. 52413 (Amendment): R651-614. Fishing, Hunting and Trapping.
Published: 01/15/2020
Effective: 02/24/2020

Wildlife Resources
No. 52441 (Amendment): R657-5. Taking Big Game
Published: 01/01/2020
Effective: 02/10/2020

No. 52442 (Amendment): R657-42. Fees, Exchanges, Surrenders, Refunds
Published: 01/01/2020
Effective: 02/10/2020

No. 52443 (Amendment): R657-57. Division Variance Rule
Published: 01/01/2020
Effective: 02/10/2020

No. 52444 (Amendment): R657-62. Drawing Application
Published: 01/01/2020
Effective: 02/10/2020

Public Service Commission
Administration
No. 52459 (Amendment): R746-409. General Provisions
Published: 01/01/2020
Effective: 02/10/2020

No. 52464 (Amendment): R746-8. New Technology Equipment Distribution Program (NTEDP)
Published: 01/01/2020
Effective: 02/10/2020

Treasurer
Unclaimed Property
No. 52366 (New Rule): R966-1. Unclaimed Property Act Rules
Published: 12/15/2019
Effective: 01/22/2020

Workforce Services
Administration
No. 52463 (Repeal): R982-700. Employment Opportunities Website
Published: 01/01/2020
Effective: 02/18/2020

End of the Notices of Rule Effective Dates Section