

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Managing Editor

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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 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.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 <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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TABLE OF CONTENTS

SPECIAL NOTICES	1
Natural Resources	
Administration	
Extended Public Comment for the Proposed New Rule R634-3, Compensatory Mitigation Program, Filing No. 41410.....	1
EXECUTIVE DOCUMENTS	3
Governor	
Administration	
Calling the Sixty-Second Legislature Into the First Extraordinary Session, Utah Proclamation No. 2017-1E.....	3
NOTICES OF PROPOSED RULES	5
Administrative Services	
Facilities Construction and Management	
No. 41578 (Amendment): R23-3 Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities.....	6
Fleet Operations	
No. 41609 (Amendment): R27-7 Safety and Loss Prevention of State Vehicles.....	11
Commerce	
Real Estate	
No. 41618 (Amendment): R162-2c Utah Residential Mortgage Practices and Licensing Rules.....	15
Education	
Administration	
No. 41646 (New Rule): R277-122 Board of Education Procurement.....	21
No. 41647 (Amendment): R277-474-3 General Provisions.....	23
No. 41648 (Amendment): R277-487 Public School Data Confidentiality and Disclosure.....	24
Environmental Quality	
Air Quality	
No. 41626 (Amendment): R307-122 General Requirements: Heavy Duty Vehicle Tax Credit.....	30
No. 41627 (New Rule): R307-230 NOx Emission Limits for Natural Gas-Fired Water Heaters.....	32
No. 41628 (Amendment): R307-309 Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust.....	33
Waste Management and Radiation Control, Waste Management	
No. 41650 (Amendment): R315-15 Standards for the Management of Used Oil.....	37
No. 41651 (Amendment): R315-260 Hazardous Waste Management System.....	49
No. 41652 (Amendment): R315-261 General Requirements – Identification and Listing of Hazardous Waste.....	59
No. 41653 (Amendment): R315-262 Hazardous Waste Generator Requirements.....	68
No. 41654 (Amendment): R315-263-12 Transfer Facility Requirements.....	116
No. 41655 (Amendment): R315-264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.....	117
No. 41656 (Amendment): R315-265-1 Incorporation.....	131
No. 41657 (Amendment): R315-266-80 Spent Lead-Acid Batteries Being Reclaimed -- Applicability and Requirements.....	132
No. 41658 (Amendment): R315-268 Land Disposal Restrictions.....	135
No. 41659 (Amendment): R315-270-1 Hazardous Waste Permit Program -- Purpose and Scope of These Regulations.....	141
No. 41660 (Amendment): R315-273 Standards for Universal Waste Management.....	145
No. 41661 (Amendment): R315-301-2 Definitions.....	146

TABLE OF CONTENTS

No. 41662 (Amendment): R315-304-3 Definitions.....	152
No. 41663 (Amendment): R315-305-3 Definitions.....	154
Financial Institutions	
Administration	
No. 41608 (Amendment): R331-10 Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions.....	155
Governor	
Economic Development	
No. 41649 (New Rule): R357-20 Education Computing Partnerships.....	157
Health	
Family Health and Preparedness, Emergency Medical Services	
No. 41617 (Amendment): R426-8 Emergency Medical Services Ground Ambulance Rates and Charges.....	159
Disease Control and Prevention, Laboratory Services	
No. 41568 (Repeal): R438-12 Rule for Law Enforcement Blood Draws.....	161
Human Services	
Substance Abuse and Mental Health	
No. 41607 (Amendment): R523-5 Adult Peer Support Specialist Training and Certification.....	162
Judicial Performance Evaluation Commission	
Administration	
No. 41620 (Amendment): R597-2-2 Disclosure, Recusal, and Disqualification.....	165
No. 41623 (Amendment): R597-3-1 Evaluation Cycles.....	167
No. 41624 (Amendment): R597-3-3 Courtroom Observation.....	168
No. 41625 (Amendment): R597-3-5 Public Comments.....	170
Natural Resources	
Water Rights	
No. 41590 (Repeal): R655-2 Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.....	171
Wildlife Resources	
No. 41585 (New Rule): R657-29 Government Records Access Management Act.....	175
Pardons (Board Of)	
Administration	
No. 41615 (Amendment): R671-202 Notification of Hearings.....	177
Public Safety	
Administration	
No. 41586 (New Rule): R698-10 Electronic Meetings.....	178
Public Service Commission	
Administration	
No. 41645 (Amendment): R746-343-15 Surcharge.....	179
No. 41644 (Amendment): R746-360-4 Application of Fund Surcharges to Customer Billings.....	180
Transportation	
Program Development	
No. 41619 (Amendment): R926-11 Clean Fuel Vehicle Decal Program.....	182
Workforce Services	
Housing and Community Development	
No. 41611 (Amendment): R990-101 Qualified Emergency Food Agencies Fund (QEFAF).....	184
Rehabilitation	
No. 41616 (Amendment): R993-300 Certification Requirements for Interpreters for the Hearing Impaired.....	187
NOTICES OF CHANGES IN PROPOSED RULES.....	191
Insurance	
Administration	
No. 41296: R590-206 Privacy of Consumer Financial and Health Information Rule.....	192

NOTICES 120-DAY (EMERGENCY) RULES.....	207
Natural Resources	
Oil, Gas and Mining; Oil and Gas	
No. 41614: R649-2-9 Refusal to Agree.....	207
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION.....	209
Administrative Services	
Risk Management	
No. 41601: R37-1 Risk Management General Rules.....	209
No. 41602: R37-2 Risk Management State Workers' Compensation Insurance	
Administration.....	210
No. 41603: R37-3 Risk Management Adjudicative Proceedings.....	210
No. 41604: R37-4 Adjusted Utah Governmental Immunity Act Limitations on	
Judgments.....	211
Capitol Preservation Board (State)	
Administration	
No. 41573: R131-3 Use of Magnetometers on Capitol Hill.....	211
Commerce	
Consumer Protection	
No. 41610: R152-34 Postsecondary Proprietary School Act Rules.....	212
Environmental Quality	
Air Quality	
No. 41629: R307-105 General Requirements: Emergency Controls.....	212
No. 41630: R307-214 National Emission Standards for Hazardous Air Pollutants.....	213
No. 41631: R307-401 Permit: New and Modified Sources.....	213
No. 41632: R307-403 Permits: New and Modified Sources in Nonattainment Areas	
and Maintenance Areas.....	214
No. 41634: R307-406 Visibility.....	214
No. 41636: R307-410 Permits: Emissions Impact Analysis.....	215
No. 41638: R307-414 Permits: Fees for Approval Orders.....	216
No. 41639: R307-415 Permits: Operating Permit Requirements.....	216
No. 41640: R307-417 Permits: Acid Rain Sources.....	217
No. 41641: R307-420 Permits: Ozone Offset Requirements in Davis and Salt Lake	
Counties.....	217
No. 41642: R307-421 Permits: PM10 Offset Requirements in Salt Lake County and	
Utah County.....	218
No. 41643: R307-424 Permits: Mercury Requirements for Electric Generating Units.....	218
Water Quality	
No. 41613: R317-3 Design Requirements for Wastewater Collection, Treatment and	
Disposal Systems.....	219
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 41588: R414-100 Medicaid Primary Care Network Services.....	219
No. 41589: R414-200 Non-Traditional Medicaid Health Plan Services.....	220
Insurance	
Administration	
No. 41569: R590-238 Captive Insurance Companies.....	220
Labor Commission	
Administration	
No. 41587: R600-2 Operations.....	221
Adjudication	
No. 41605: R602-1 General Provisions.....	221
No. 41612: R602-2 Adjudication of Workers' Compensation and Occupational Disease	
Claims.....	222
Natural Resources	
Water Rights	
No. 41593: R655-1 Wells Used for the Discovery and Production of Geothermal Energy	
in the State of Utah.....	223

TABLE OF CONTENTS

No. 41592: R655-6 Administrative Procedures for Informal Proceedings Before the Division of Water Rights.....	223
No. 41591: R655-15 Administrative Procedures for Distribution Systems and Water Commissioners.....	224
Wildlife Resources	
No. 41580: R657-2 Adjudicative Proceedings.....	224
No. 41583: R657-4 Possession of Live Game Birds.....	225
No. 41581: R657-22 Commercial Hunting Areas.....	225
No. 41582: R657-30 Fishing License for the Terminally Ill.....	226
Public Safety	
Fire Marshal	
No. 41571: R710-1 Concerns Servicing Portable Fire Extinguishers.....	226
No. 41572: R710-2 Rules Pursuant to the Utah Fireworks Act.....	227
No. 41574: R710-3 Assisted Living Facilities.....	227
No. 41575: R710-4 Buildings Under the Jurisdiction of the State Fire Prevention Board.....	228
No. 41584: R710-7 Concerns Servicing Automatic Fire Suppression Systems.....	228
No. 41577: R710-9 Rules Pursuant to the Utah Fire Prevention and Safety Act.....	229
NOTICES OF FIVE YEAR EXPIRATIONS.....	231
Natural Resources	
Wildlife Resources	
No. 41579: R657-29 Government Records Access Management Act.....	231
NOTICES OF RULE EFFECTIVE DATES.....	233
RULES INDEX	
BY AGENCY (CODE NUMBER)	
AND	
BY KEYWORD (SUBJECT).....	235

SPECIAL NOTICES

Natural Resources Administration

Extended Public Comment for the Proposed New Rule R634-3, Compensatory Mitigation Program, Filing No. 41410

A proposed new Rule R634-3, Compensatory Mitigation Program, was published in the April 15, 2017, issue of the Utah State Bulletin (2017-8, pg. 35) under Filing No. 41410. The 30-day public comment period was to end on 05/15/2017. However, at the request of members of the public, the Department of Natural Resources (DNR) is extending the comment period on this rule through 06/15/2017.

Direct questions regarding this rule to: Kaelyn Anfinson by phone at 801-538-7201, by FAX at 801-538-7315, or by Internet E-mail at kaelynanfinson@utah.gov

End of the Special Notices Section

EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

Calling the Sixty-Second Legislature Into the First Extraordinary Session, Utah Proclamation No. 2017-1E

PROCLAMATION

WHEREAS, since the close of the 2017 General Session of the 62nd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate of the 62nd Legislature of the State of Utah into the First Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 17th day of May 2017, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2017 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 12th day of May 2017.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2017/01/E

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 May 02, 2017, 12:00 a.m., and May 15, 2017, 11:59 p.m. are included in this, the June 01, 2017, 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 July 3, 2017. 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 September 29, 2017, 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 OF 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

**Administrative Services, Facilities
Construction and Management
R23-3**

**Planning, Programming, Request for
Capital Development Projects and
Operation and Maintenance Reporting
for State Owned Facilities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41578

FILED: 05/03/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the changes to this rule is to comply with changes made by S.B. 9 from the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the rewriting of Subsection R33-3-4(1), which explains the requirement for Building Board approval before an agency may begin programming for a new facility which requires legislative approval; the addition of Subsection R33-3-4(3), which allows the Board to approve funding for the programming of a new facility prior to legislative appropriation; the rewriting of Subsection R33-3-10(5), which establishes the deadline for initial capital development requests; the addition of Subsection R33-3-10(6), which encourages agencies to submit modifications to initial requests no later than 14 days prior to the October Board meeting; the removal of Subsection R23-3-11(4); the addition of language to Subsection R23-3-11(5), which requires reporting of the amount an agency received and expended on operations and maintenance for the prior fiscal year; and the provision permitting the Board Director to adjust direct and indirect costs based on inflation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103 and Section 63A-5-211

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are regarding policy such as modifying procedure and establishing deadlines.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are regarding policy such as modifying procedure and establishing deadlines.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this

rule. The changes are regarding policy such as modifying procedure and establishing deadlines.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are regarding policy such as modifying procedure and establishing deadlines.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons as a result of the changes to this rule. The changes are regarding policy such as modifying procedure and establishing deadlines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes applied to Rule R23-3. I also believe that there are no potential fiscal impacts on businesses affected by the changes to the rule. I believe the wording incorporated in the changes reflects the intent the Board. I have no other comments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jeff Reddoor, State Building Board Manager

R23. Administrative Services, Facilities Construction and Management.

R23-3. Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities.

R23-3-1. Purpose and Authority.

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital

development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) This rule is also to provide the rules and standards as required by Section 63A-5-103(1)(e)(v).

(5) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

(1) "Agency" means as defined in Section 63A-1-103(1).

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" may include feasibility studies, building evaluations and a master plan.

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) ~~[The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.]An agency is required to receive approval from the Board before the agency begins programming for a new facility that requires legislative approval under Subsection 63A-5-104(3).~~

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

(3) The Board may approve the programming of a new facility before the Legislature makes an appropriation for the new facility under Subsection 63A-5-104(8)(a). When the program is funded by the agency, programming funds may be reimbursed from an appropriation, if at a later time, the Legislature funds the programming.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) The Division may in its sole discretion based on the interest of the State, determine whether a programming firm (person) may be able to participate in any or all of the design or other similar aspects of a project.

(2) If there is any restriction of a programming firm to participate in future selections of a project, the Division, shall provide this restriction in any competitive solicitation, if there is one, that may be issued for selecting a programming firm. If there is no solicitation for the selection of the programming firm (i.e. sole source, small purchase, emergency procurement, etc.), then Division may simply provide any restriction of the firm's future participation in any other aspect of the project, by placing the restriction in the contract.

(3) Notwithstanding any provision of this Rule or any other Rule of this Board, the Division may terminate or suspend programming and design contracts at any time consistent with the provisions of the contract.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;
 (b) programs; and
 (c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of \$25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

R23-3-10. Standards and Requirements for a Capital Development Project Request, Including a Feasibility Study.

(1) The Board Director shall establish a form for the consideration of Capital Development Projects which provides the following:

(a) the type of request, including whether it is, in whole or part, state funded, non-state or private funded, or whether it is non-state or private funded with an operations and maintenance request;

(b) defines the appropriateness and the project scope including proposed square footage;

(c) the proposed cost of the project including the preliminary cost estimate, proposed funding, the previous state funding provided, as well as other sources;

(d) the proposed ongoing operating budget funding, new program costs and new full time employees for the operations and maintenance and other programs;

(e) an analysis of current facilities and why the proposed facility is needed;

(f) a project executive summary of why the project is needed including the purpose of the project, the benefits to the State, how it relates to the mission of the entity and related aspects;

(g) the feasibility and planning of the project that includes how it corresponds to the applicable master plan, the economic impacts of the project, pedestrian, transportation and parking issues, various impacts including economic and community

impacts, the extent of site evaluation, utility and infrastructure concerns and all other aspects of a customary feasibility study for a project of the particular type, location, size and magnitude;

(h) any land banking requests; and

(i) any other federal or state statutory or rule requirements related to the project.

(2) The form referred to in subsection (1) above shall also include the scoring criteria and weighting of the scores to be used in the Board's prioritization process, including:

(a) existing building deficiencies and life safety concerns;

(b) essential program growth;

(c) cost effectiveness;

(d) project need, including the improved program effectiveness and support of critical programs/initiatives;

(e) the availability of alternative funding sources that does not include funding from the Utah legislature; and

(f) weighting for all the above criteria as published in the Five Year Building Program for each agency as published and submitted to the Utah Legislature for the General Session immediately preceding the prioritization of the Board unless the Board in a public meeting has approved a different criteria and/or weighting system.

(3) The Board shall verify the completion and accuracy of the feasibility study referred to in this Rule.

(4) A capital development request by an agency described in Section 53B-1-102 shall comply with Section 63A-5-104(2)(~~b~~) ~~(d)~~ and the Board shall comply with Section 63A-5-104(2)(e).

(5) An agency may ~~[not modify a capital development project request after the deadline for submitting the request prior to the Board's October meeting, except to the extent that a modification of the scope of the project, or the amount of funds requested, is necessary due to increased construction costs or other factors outside of the agency's control]~~ submit an initial capital development request to the Board Director no later than the third Monday of July prior to the Utah Legislative Session that the request is related.

(6) An agency shall use best efforts to modify any submitted initial capital development request which was submitted to the Board director, no later than 14 days before the October Board meeting. Notwithstanding, the Board reserves the right to modify the request no later than the end of the hearing for the request at the October Board meeting. Any modification under this Rule R23-3-10(6) shall be for the purpose of a correction, or to better meet the standards or requirements of this Rule R23-3-10.

R23-3-11. Standards and Requirements Related to Operations and Maintenance of State-Owned Facilities.

(1) No later than October 1 of each calendar year, each agency shall report operations and maintenance expenditures for state owned facilities covering the prior fiscal year to the Board Director in accordance with Section 63A-5-103(e)(v) and this rule. All data must be entered into the Riskconnect database by the agency in accordance with the format outlined by the Board Director.

(2) The facility maintenance standards shall include utility metering requirements to track the utility costs as well as all other necessary requirements to monitor facility maintenance costs.

(3) The adopted Board facility management standards including annual reporting requirements shall be published on the Division of Facilities Construction and Management website.

(4) ~~[If the Board does not adopt new or amended facility maintenance standards, the prior adopted standards on the DFCM website shall apply.~~

~~(5)]~~The Board Director shall oversee the conducting of facility maintenance audit for state-owned facilities.

(6) Each agency shall create operations and maintenance programs in accordance with this rule 23-3 and have it included in the agency institutional line items. On or before September 1, 2016, and each September 1 of every following year, each agency shall revise the agency's budget to comply with Section 63A-5-103 and this Rule R23-3-11(6), including but not limited to, the inclusion of the amount the agency received and expended on operations and maintenance for the immediately preceding fiscal year. The Board Director may request when it is in the interest of the Board to understand the amount of operations and maintenance funding available for a building, that an agency provide the information of the amounts received and expended on a per-building basis.

(7) The Board Director in the annual capital needs request sent to the agencies, shall provide an adjustment for inflationary costs of goods and services for the previous 12 months from the issuance of the annual needs request. When the annual report of each agency is reviewed by the Board and later submitted to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget, it shall include the review and adjustment for inflationary costs of goods and services. All matters in this subsection shall be in accordance with Section 63A-5-103(1)(e)(v) and this rule.

(8) The report by the agencies to the Board Director shall also include the actual cost for operations and management requests for a new facility, when applicable.

R23-3-12. Operations and Maintenance Standards, Facilities Maintenance Programs and Standards.

The purpose of these programs and standards is to outline the minimum requirements for maintaining state owned facilities and infrastructures in a manner that will maximize the usefulness and cost effectiveness of these facilities in enhancing the quality of life of Utah state employees, citizens, and visitors. Additional work may be required to satisfy code or judicial requirements. All agencies and institutions shall comply and will be audited against these standards by the Board. Exempt agencies are to review their maintenance programs against these standards and to report the degree of compliance for each of their individual building level or complexes to the legislature through the Board.

(1) Documentation.

(a) Architectural and Mechanical.

(i) At least one copy of the Operations and Maintenance Manuals shall be maintained at the facility or complex.

(ii) At least one copy of the architectural, mechanical, and electrical as-built drawings shall be maintained at the facility or complex.

(iii) A mechanism shall be provided whereby as-built drawings are promptly updated upon changes in the structural, mechanical, electrical, or plumbing systems.

(iv) As-built drawings shall be reviewed periodically to ensure that they reflect the current building or infrastructure configuration to be maintained at the facility or complex.

(v) Reserve copies of all building documentation shall be archived in an appropriate and separate location from the facility.

(2) Equipment Data Base and Tagging.

(a) An appropriate equipment numbering system shall be utilized and metal, plastic tags or labels placed on all building equipment and electrical panels.

(b) All equipment name plate data shall be collected, documented, and filed in a computerized data base/computerized maintenance management system (CMMS).

(3) Corrective Maintenance.

(a) A work request system shall be defined and made available to the user of the facility/infrastructure so that maintenance problems can be reported and logged promptly by the maintenance department. A log of all requests shall be maintained indicating the date of the request and the date of completion.

(b) A work order system shall be established to govern the procedures for corrective maintenance work. The work order system shall capture maintenance time, costs, nature of repair, and shall provide a basis for identifying maintenance backlog on the facility/infrastructure.

(c) Maintenance backlogs on the facility/infrastructure shall be regularly reviewed and older requests processed so that no request goes unheeded and all requests are acted upon in a timely manner.

(d) A priority system for corrective maintenance shall be established so that maintenance work is accomplished in an orderly and systematic manner. The facility user shall be made aware of the priority of requested maintenance and the time expected to accomplish the correction. If the stated goal cannot be met, the user shall be informed of the new goal for completing the request.

(e) The agency and institution shall report to the Board Director current and accurate operations and maintenance costs tracked to the individual building level for any facility measuring 3,000 GSF or greater. Locations consisting of multiple facilities that individually do not meet the minimum GSF requirement shall be required to report operations and maintenance costs at the campus/complex level. Reporting for Individual building O and M cost shall be reported no later than October 1 of each year.

(f) All operations and maintenance expenditure reports for both direct and indirect cost shall contain current and accurate costs including but not limited to: Utilities (Electrical, Gas/Fuel, and Water in certain cases Steam, High Temp Water, Chilled Water and Sewer may need reporting), Labor, Materials, Custodial, Landscape and Grounds services, Insurance, travel, leasing and rent. The direct and indirect costs shall be adjusted for inflation based on the applicable portion of the consumer price index in the reasonable discretion of the Board Director.

(4) Preventive Maintenance.

(a) State facilities managers shall automate preventive maintenance scheduling and equipment data bases.

(b) All equipment (e.g. chillers, boilers, air handlers and associated controls, air compressors, restroom exhaust fans, domestic hot water circulating pumps, automatic door operators, temperature control devices, etc.) shall be on a computer based preventive maintenance schedule. The frequency of preventive maintenance procedures shall be determined by manufacturer's recommendations and local craft expertise and site specific conditions.

(c) A filter maintenance schedule shall be established for HVAC filters and a record of filter changes maintained.

(d) Preventive maintenance work orders shall be issued for both contract and in house preventive maintenance and the completion of the prescribed maintenance requirements documented.

(e) Emergency generators shall be test run at least monthly. If test runs are not automatic, records of these test runs shall be maintained at the site. At least yearly, the transfer from outside power to emergency power shall be scheduled and successfully performed.

(5) Boilers.

(a) Steam Boilers.

(i) Steam boilers shall be checked daily when operational or on an automated tracking system.

(ii) Low water cut off devices shall be checked for actual boiler shut down at the beginning of the heating season and at least quarterly thereafter by duplicating an actual low-water condition.

(iii) Boiler relief valves shall be tested for proper operation at least annually.

(iv) A record of these tests shall be maintained near the location of the boiler.

(v) A daily log of the operating parameters shall be maintained on boilers when they are operational to include pressures, temperatures, water levels, condition of makeup and boiler feed water, and name of individual checking parameters.

(b) Hot Water And Steam Boilers

(i) All boilers shall receive inspections and certification as required from an authorized state agent or insurance inspector. The certificate of compliance shall be maintained at the boiler.

(ii) Monthly tests of boiler water pH and Total Dissolved Solids shall constitute the basis upon which to add water treatment chemicals. A log of these tests shall be maintained in the boiler room.

(6) Life Safety.

(a) All elevators shall receive regular inspections and maintenance by certified elevator maintenance contractors. Records of such maintenance shall be maintained at the site. Telephones within elevators shall be checked monthly for proper operation.

(i) All elevators shall have current Permits to Operate posted near the elevator equipment as required by the Utah State Labor Commission.

(b) Fire Protection Equipment.

(i) Detection and notification systems (e.g. control panel, smoke detection devices, heat sensing devices, strobe alarm lights, audible alarm indicating devices, phone line communication module, etc.) shall be inspected annually and tested for operation at least semi-annually by a properly certified technician. A record of these inspections shall be maintained and the FACP needs to be properly tagged as required by the Utah State Fire Marshal.

(ii) Halon/Ansulor pre-action systems shall be inspected and tested by a certified inspector semi-annually to ensure their readiness in the event of a fire. Testing and inspection of these systems shall be documented.

(iii) Fire extinguishers shall be inspected monthly and tagged annually by a certified inspector and all tags should be properly and legibly completed.

(iv) Automatic fire sprinkler systems, standpipes and fire pumps shall be inspected annually by a certified technician. Tags should be properly and completely filled out including the type of inspection, month and year those inspections were performed, the person who performed the inspection, and the certificate of registration number of the person performing the inspection.

(c) Uninterruptible power supply systems for data processing centers shall be inspected and tested appropriately to ensure their readiness in the event of external power interruptions. Maintenance on these systems shall be documented.

(d) Emergency directional and exit devices (e.g. exit signs, emergency lights, ADA assist equipment, alarm communicators, etc.) shall be inspected at least quarterly for proper operation.

(7) Air Conditioning and Refrigerated Equipment.

(a) Chillers.

(i) A daily log or computerized log of important data (e.g. chilled water supply and return temperature, condenser water supply and return temperature, current draw, outside air temperature, oil level and pressure, etc.) should be kept, and the information trended to identify changes in the system operation. The causes of change should then be determined and corrected to prevent possible system damage.

(ii) The systems shall be leak checked on a quarterly basis during the operating season and once during the winter.

(iii) A factory trained technician should perform a service inspection annually to include an oil analysis. Any abnormal results should be discussed with the chiller manufacturer to determine a proper course of action.

(iv) Chillers shall not be permitted to leak in excess of 15% of their total charge annually. Losses exceeding this amount are in violation of the law and may result in costly fines.

(v) Should refrigerant need to be added to a system, document the amount of refrigerant added; the cause of the loss; and type of repairs done.

(vi) An adequate supply of refrigerant for the uninterrupted operation of existing CFC chillers shall be maintained until the chiller is converted or replaced. Examples of CFCs are R11, R12, R113, R502, etc.

(vii) Maintenance personnel that perform work other than daily logs and visual inspections on CFC chillers or refrigeration equipment containing CFCs or HCFCs must by law have an EPA certification matching the type of equipment being serviced.

(viii) The condition of refrigerant cooling water systems such as cooling towers shall be checked visually at least weekly for algae growth and scaling and appropriate treatment administered.

(b) Roof Top and Package Units.

(i) Annually check and clean as needed the condenser coil and evaporator coil.

(ii) The following preventive maintenance items shall be completed annually: tighten belts, oil motors, leak check, clean evaporator pans and drains.

(iii) Quarterly check filters and replace where necessary.

(c) Small Refrigerated Equipment.

(i) Annually clean condenser coil.

(ii) Annually oil the condenser fan motor and visually inspect the equipment and make necessary repairs as needed.

(8) Plumbing.

(a) All Backflow Prevention Devices shall be tested by a certified technician at least annually and proper documentation shall be filed with the appropriate agency. Proper documentation shall be kept on site and readily available.

(b) Cross-connection control shall be provided on any water operated equipment or mechanism using water treating chemicals or substances that may cause pollution or contamination of domestic water supply.

(c) Any water system containing storage water heating equipment shall be provided with an approved, UL listed, adequately sized combination temperature and pressure relief valve, and must also be seismically strapped.

(d) Pressure vessels must be tested annually or as required and all certificates must be kept current and available on site.

(9) Electrical Systems.

(a) All electrical panels shall have a thermal-scan test performed bi-annually on all components to identify hot spots or abnormal temperatures. The results of the test shall be documented.

(b) A clearance of three feet, or as required by NEC shall be maintained around all electrical panels and electrical rooms shall not be used for general storage.

(c) Every electrical panel shall be properly labeled identifying the following: panel identifier; area being serviced by each individual breaker; and equipment being serviced by each breaker or disconnect.

(d) All pull boxes, junction boxes, electrical termination boxes shall have proper covers in place and panels accessible to persons other than maintenance personnel shall remain locked to guard against vandalism or personal injury.

(e) Only qualified electrical personnel shall be permitted to work on electrical equipment.

(10) Facility Inspections.

(a) The facility shall periodically receive a detailed and comprehensive maintenance audit. The audit shall include HVAC filter condition, mechanical room cleanliness and condition, corrective and preventive maintenance programs, facility condition, ADA compliance, level of performance of the janitorial service, condition of the grounds, and a customer survey to determine the level of user satisfaction with the facility and the facility management and maintenance services.

(b) A copy of the above audit shall be maintained at the facility.

(c) Each year a Facility Risk Management Inspection shall be conducted, documented, and filed with the Risk Management Division of the Department of Administrative Services.

(d) Actions necessary to bring the facility into compliance with Risk Management Standards for routine maintenance items shall be completed within two months following the above Risk Management Inspection. Items requiring capital expenditures shall be budgeted and accomplished as funds can be obtained.

(e) Every five years the facility shall be inspected and evaluated by an Architect/Engineer (A/E), qualified third party or qualified in-house personnel to determine structural and infrastructural maintenance and preventive maintenance needs.

(i) The structural inspection and evaluation may include interior and exterior painting, foundations, walls, carpeting, windows, roofs, doors, ADA and OSHA compliance, brick work, landscaping, sidewalks, structural integrity, and exterior surface cleanliness.

(ii) The mechanical and electrical evaluation shall include the HVAC systems, plumbing systems, security, fire prevention and warning systems, and electrical distribution systems.

(f) The above inspection shall be documented and shall serve as a basis for budgeting for needed capital improvements.

(g) Intrusion alarm systems that communicate via phone line shall be tested monthly to ensure proper operation.

(h) Periodic inspections of facilities may be requested of local fire departments and the identified deficiencies promptly corrected. These inspections and corrections shall be documented and kept on file at the facility.

(11) Indoor Air Quality and Energy Management.

(a) Indoor air quality shall be maintained within pertinent ASHRAE, OSHA, and State of Utah guidelines.

(b) All individual building utility costs (gas, electric, water, etc.) at facilities meeting the criteria listed in section 3.5 of the Facility Maintenance Standards shall be metered and reported back to the Board Director by October 1 of each year and made available at the facility so that energy usage can be accurately determined and optimized.

(c) Based on the ongoing analysis of energy usage, appropriate energy conservation measures shall be budgeted for, implemented, and the resulting energy savings documented.

(12) The following documents shall be on hand at the facility (where applicable) in an up-to-date condition:

(a) A Hazardous Materials Management Plan;

(b) An Asbestos Control and Management Plan;

(c) A Laboratory Hygiene Plan;

(d) A Lockout/Tag out Procedure for Performing Maintenance on Building Equipment;

(e) A Blood Borne Pathogen Program;

(f) An Emergency Management Plan to include emergency evacuation and disaster recovery; and

(g) A Respirator Program.

KEY: planning, public buildings, design, procurement

Date of Enactment or Last Substantive Amendment: [January 20], 2017

Notice of Continuation: April 3, 2014

Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-211

**Administrative Services, Fleet
Operations
R27-7
Safety and Loss Prevention of State
Vehicles**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41609

FILED: 05/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are in response to telematics information now available to the division, and to bring the language of the rule in line with the Administrative Rulemaking Manual.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include replacing the acronym "DFO" with "division", replacing the requirement for an Accident Review Committee with the requirement of a Driver Safety Committee for each agency that uses state vehicles, adding using a handheld wireless device to the list of offenses which may result in revocation or suspension of driving privileges, and adding Subsection R27-7-5(5) which provides guidance on the determination of major threshold violations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(d)(iii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are regarding new information and procedures and are technical in nature.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are regarding new information and procedures and are technical in nature.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are regarding new information and procedures and are technical in nature.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are regarding new information and procedures and are technical in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are regarding new information and procedures and are technical in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes, and I believe that there is no potential for fiscal impacts on businesses as a result of the changes to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jeff Mottishaw, Director

R27. Administrative Services, Fleet Operations.**R27-7. Safety and Loss Prevention of State Vehicles.****R27-7-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the [~~Division of Fleet Operations (DFO)]division to make rules establishing requirements for fleet safety and loss prevention programs.~~

R27-7-2. [~~Accident Reporting and Liability]~~Reporting Accidents and Violations of Motor Vehicle Laws.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify [~~DFO]~~the division, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

(2) Authorized drivers shall also follow Section R27-3-14 regarding reporting of violations of motor vehicle laws.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or

her driver license has been reinstated or ~~[DFO]~~the division verifies the license has been reinstated.

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Safety Committee or the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in [3]three or more preventable accidents during a three-~~[(3)]~~ year period; or

(b) The authorized driver has [3]three or more moving violations while driving a state vehicle within a 12[-]-month period; or

(c) The authorized driver has been convicted of any of the following:

(i) Alcohol related driving violations;

(ii) reckless, careless, or negligent driving (including excessive speed violations);

(iii) driving violations that have resulted in injury or death;

(iv) felony related driving violations;

(v) hit and run violations;

(vi) impaired driving;

(vii) using a handheld wireless communication device while operating a moving motor vehicle; or

(viii) ~~[or]~~ any other driving violation determined by the Driver Safety Committee or the Driver Eligibility Board as posing a significant risk to the safety or loss prevention of state vehicles.

(d) An authorized driver uses a vehicle in an[The] unauthorized [use,]way or misuses, abuses or neglects [of-]a state vehicle as validated by the driver's agency;[-or]

~~(e) [On the basis of citizen complaints validated by the agency, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.]As provided in Section 63A-9-501, an authorized driver misuses or illegally operates a vehicle; or~~

(f) An authorized driver violates any major threshold as defined by the division or in policy by the employing agency.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Safety Committee or the Driver Eligibility Board shall be in addition to agency-imposed ~~[discipline]disciplinary, corrective, or remedial action; except when the withdrawal of authority conflicts with an internal review and disciplinary process approved by the division and substantially meets the requirements outlined in rule.[-, if any-]~~

(5) Pursuant to procedures outlined in Rule R27-2, a driver[Drivers] declared ineligible to operate a state vehicle by the Driver Safety Committee may appeal that determination to the Driver Eligibility Board. [may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any]An appeal to the Driver Eligibility Board[Executive Director of DAS or his/her designee] must be made in writing within 30 days from the date the Driver [Eligibility Board]Safety Committee issues its decision.[- declared a state driver ineligible to operate a vehicle.]

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule ~~[will]may~~ be subject to a review of their driving record[the Driver Eligibility standards in R27-7-3(3)] for three years previous to the hire date, and employment offers may be made conditional upon a favorable review.

R27-7-4. [Accident Review Committee (ARC)]Driver Safety Committee.

(1) Each agency using a state vehicle[leasing vehicles from the Division of Fleet Operations] shall establish and maintain [an Accident Review Committee (ARC)]a Driver Safety Committee or an internal review and disciplinary process that is approved by the division and substantially meets the requirements outlined in rule for the Driver Safety Committee.[-Each agency ARC shall conduct at least quarterly reviews of all accidents involving state vehicles under the possession or control of their respective agencies.]

(2) The purpose of the [ARC]Driver Safety Committee is to increase the safety of the driver and reduce losses associated with the state vehicles.[the number of accidents involving drivers of vehicles being used in the course of conducting state business.]The Driver Safety Committee shall review any accident involving state vehicles in the possession or under the control of the agency. The Driver Safety Committee also reviews eligibility of a driver to operate a state vehicle based on the provisions of Section R27-7-3.

(3) After ~~[DFO]~~the Division of Risk Management has made an initial determination regarding the [status]preventability of an accident, the agency [ARC]Driver Safety Committee shall [determine, through a review process, whether-]determine whether it agrees with the initial determination of preventability. [an accident was either preventable or non-preventable,]The Driver Safety Committee shall use[using] standards published by the National Safety Council.

(4) Each agency [ARC]Driver Safety Committee shall~~[-]~~ meet monthly, except in cases when there are not items to review. The items to review are the preventability determination of any accidents and any major threshold violations committed in the previous month. The Driver Safety Committee shall report to the division its accident and major threshold determination and any actions taken.[-within one (1) calendar month following the last day of the quarter (March, June, September, December), provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable or non-preventable.]

(5) If an agency [ARC]Driver Safety Committee does not send the monthly Driver Safety Committee report[quarterly-accident reviews] as specified in R27-7-4(4), the initial preventability determination[status] of [the]any accidents will stand. Any major threshold violations will receive the minimum driver eligibility suspension as outlined in Subsection R27-7-5(6). A driver may appeal the accident determination to the Driver Eligibility Board pursuant to Section R27-2.[be reviewed by the Driver Eligibility Board on behalf of the agency ARC. The Driver Eligibility Board's decision about the status any vehicle accident will be final.]

(6) The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency [ARC]Driver Safety Committee.

(7) If an agency has fewer than five employees, the agency head may perform the duties of the Driver Safety Committee outlined in rule. In the event the agency head is the driver to be reviewed, the review may be done by the Driver Eligibility Board. Appeals from the affected agency head will be heard by the Executive Director of the Department of Administrative Services, or designee and shall follow the appeal process outlined in rule.

R27-7-5. [~~Accident Review Committee Guidelines~~Driver Safety Committee Standards.

(1) The [ARC]Driver Safety Committee shall have no less than three[-(3)] voting members. The members shall consist of, at a minimum, a risk coordinator, human resource representative and a fleet manager. In the absence of the fleet manager the employee's supervisor may fill the position.[be from different areas in the agency.]

(2) The Driver Safety Committee shall review the initial accident preventability determination, moving violations committed in the state vehicle, moving violations outlined in Subsection R27-7-3(c), validity of citizen complaints and any other major threshold violations.

(3) An accident [shall]may be classified as preventable if any of the following factors are involved:

- (a) Driving too fast for conditions;
- (b) Failure to observe clearance;
- (c) Failure to yield;
- (d) Failure to properly lock the vehicle;
- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;
- (j) Reckless Driving as defined in [~~Utah Code~~Section

41-6a-528;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

([3]4) An accident shall be classified as non-preventable when:

- (a) The state vehicle is struck while properly parked;
- (b) The state vehicle is vandalized while parked at an authorized location;
- (c) The state vehicle is an emergency vehicle, and
 - (i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and
 - (ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or
 - (iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

(5) Major threshold violations shall be determined as follows:

- (a) Preventable Accidents:

(i) Three preventable accidents as determined by the Driver Safety Committee or the Driver Eligibility Board in a three year period; or

(ii) any single preventable accident as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(b) Moving violations:

(i) Three moving violations in a state vehicle within a 12-month period, not specifically outlined in Subsection R27-7-3(3)(c); or

(ii) Any moving violation outlined in Subsection R27-7-3(3)(c).

(c) Validated Citizen complaints: Validated citizen complaints may be considered a major threshold violation at the discretion of the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(d) Telematics Threshold violations:

(i) Three telematics threshold violations within a 12-month period; or

(ii) Any single telematics threshold violation as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(6) Major threshold violations will result, at a minimum, in the following state vehicle driving privilege suspensions:

(a) First major threshold violation shall receive a minimum of two-working day driving suspension.

(b) Second major threshold violation within 12 months of the first major threshold violation shall receive a minimum 14-calendar day driving suspension. If the second major threshold violation is not within a 12-month period of the first, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or second major threshold violation. The aggravating factors outlined in rule should be considered.

(c) Third major threshold violation within 12 months of the second major threshold violation shall receive a minimum of 30-calendar day driving suspension. If the third major threshold violation is not within a 12-month period of the second, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or third major threshold violation. The aggravating factors outlined in rule should be considered.

(d) Fourth major threshold violation within 12 months of the third major threshold violation shall receive a minimum of 60-calendar day driving suspension. If the fourth major threshold violation is not within a 12-month period of the third, then it is at the discretion of the Drier Safety Committee as to whether it is considered the first or fourth major threshold violation. The aggravating factors outlined in rule should be considered.

(7) The members of the Driver Safety Committee shall act on the following matters:

(a) The preventability of an accident in accordance with the standards in rule and the facts surrounding the accident and as to whether the single accident should be classified as a major threshold violation. The aggravating factors outlined in Subsection R27-7-5(8) should be considered.

(b) Any other item brought before the Driver Safety Committee that is allowed the discretion of the Driver Safety Committee, including driving suspension longer than the minimums outlined in rule.

(c) The Driver Safety Committee may impose a driving suspension for a period less than what is in rule, but only after the recommended period of driving suspension has been reviewed by and approved by the Driver Eligibility Board prior to the suspension taking effect.

(d) The Driver Safety Committee shall recommend appropriate disciplinary action to the employing agency.

(8) Aggravating Factors to Consider

(a) The following list are items to be considered when reviewing the driver eligibility suspension to be imposed or whether a single event outlined in Subsection R27-7-5 should be considered a major threshold violation.

(b) The event resulted in bodily harm.

(c) The event had a high likelihood of causing bodily harm.

(d) The amount of damage caused as a result of the event.

(e) The event had a high likelihood of causing damage.

(f) The event damaged the reputation of the state or agency.

(g) The event had a high likelihood of damaging the reputation of the state or agency.

(h) The frequency of the events under consideration.

(9) State vehicle driving eligibility suspensions should begin within two weeks of the Driver Safety Committee meeting, unless a differing timeline is outlined in rule.

R27-7-6. Effects of ~~[ARC]~~Driver Safety Committee Accident Preventability Classification.

(1) In the event that an accident is determined by the ~~[ARC]~~Driver Safety Committee to be preventable, the ~~[ARC]~~Driver Safety Committee shall ~~[impose and enforce]~~require the following:

(a) as a result of ~~[F]~~the first preventable accident, the authorized driver shall be required to attend a Division of Risk Management-approved driver safety program~~[-after being involved in the first preventable accident].~~

(b) as a result of the ~~[F]~~the second preventable accident, the driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course;~~[-after being involved in a second preventable accident.]~~

(c) as a result of the third preventable accident within a three-year period, the driver shall receive a major threshold violation and be subject to the standards of the Driver Safety Committee.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board ~~[(DEB)]~~shall have at least ~~[4]~~four voting members. Members of the Board shall include a representative from the division, the Division of Risk Management, ~~[the Division of Fleet Operations],~~ the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet ~~[at least quarterly]~~within 30-calendar days of an appeal to the Driver Eligibility Board.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's

meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board or the Driver Safety Committee may suspend state vehicle driving privilege according to the provisions of Rule 27-7 for up to three years.~~[impose an ineligible status from a single day up to three years. In no case shall the ineligible status to operate a state vehicle be less than the period imposed by the courts or the employing agency.]~~

KEY: accidents, incidents, tickets, ~~[ARC]~~Driver Safety Committee

Date of Enactment or Last Substantive Amendment: ~~[March 11, 2014]~~2017

Notice of Continuation: November 6, 2015

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(d)(iii)

Commerce, Real Estate R162-2c Utah Residential Mortgage Practices and Licensing Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41618

FILED: 05/11/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes in Section R162-2c-201 make rule consistent with the adoption of the Uniform State Test approved by statutory amendment in 2017; clarify the timing, reorder the procedures, and revise the requirements for applying for a lending manager license; and clarify the deadlines associated with an application for licensure. The changes in Section R162-2c-204 add a requirement for a division-approved continuing education course for mortgage loan originators newly licensed in Utah.

SUMMARY OF THE RULE OR CHANGE: This rule amendment in Section R162-2c-201 will: 1) eliminate the requirement that a mortgage loan originator pass a test with Utah-specific questions and instead will provide that passing a national test with uniform state content is sufficient for an application for licensure; 2) clarify the timing and reorder the procedures for applying for a lending manager license; 3) clarify the experience required for an applicant for licensure as a lending manager and notify an applicant that failure to adequately document experience will result in the denial of an application for licensure; 4) allow a lending manager applicant who passes one test portion of the exam but fails the other 90 days to pass failed portion; and 5) establish that a lending

manager applicant has 90 days from achieving a passing score on both portions of the licensing exam and 12 months from completion of pre-licensing education to submit an application for licensure. The amendments in Section R162-2c-204 require all mortgage loan originators newly licensed in Utah to complete a division-approved continuing education course prior to renewing their license at the end of the first full calendar year of licensure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2c-103 and Section 61-2c-202 and Section 61-2c-204.1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Real Estate has the staff and budget in place to administer this proposed amendment. It is not expected that the proposed amendment will affect those resources or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Utah Residential Mortgage Practices and Licensing rules. No fiscal impact to local government is expected from the proposed amendment.

◆ **SMALL BUSINESSES:** The proposed amendment does not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. No fiscal impact to small business is expected from the proposed amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. No fiscal impact to persons other than small businesses, businesses, or local government entities is expected from the proposed amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment recognizes the Uniform State Test approved by statutory amendment in 2017 and makes changes in the administrative rules in order to be consistent with the statutory amendment. To offset the Utah-specific test questions required under the prior testing system, the Mortgage Commission has provided for a new continuing education course requirement for mortgage loan originators newly licensed in Utah. The newly licensed mortgage loan originators will pay a fee for this course. Private education providers will teach the course and charge a fee to attendees. The mortgage industry overwhelmingly supported the adoption of the Uniform Standard Test despite the time and costs associated with the proposed continuing education course. Because the proposed continuing education course will be taught by private education providers and because the course requirements have not yet been determined, the division is unable to provide a specific estimate of the cost of the course to affected persons but the cost is likely to be in

the range of \$50 to \$100. Compliance with other provisions of the proposed amendment are not anticipated to result in a financial impact or cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment to Section R162-2c-201 of the rule eliminates the requirement that a mortgage loan originator pass a test with Utah-specific questions for licensure, and substitutes in its place a requirement for passing the nationally recognized Uniform Standard Test. The propose amendment to Section R162-2c-201 also: 1) clarifies the timing and re-orders the procedures for applying for a lending manager license; 2) clarifies the experience required for an applicant for licensure as a lending manager and notifies the applicant that failure to adequately document their experience will result in the denial of an application for licensure; 3) allows a lending manager applicant 90 days to pass a failed portion of the test, if the applicant passes one portion of the exam but fails the other portion; and 4) provides time limitations for submitting an application for licensure after completion of pre-licensing education and testing. No fiscal impact to small business will result from these rule changes. To offset the elimination of the Utah-specific questions for licensure, the proposed amendment to Section R162-2c-204 of the rule requires all mortgage loan originators newly licensed in Utah to complete a division-approved continuing education course prior to renewing their license at the end of the first full calendar year of licensure. The specific course requirements have not been determined. However, it has been determined that the course will consist of five credit hours of continuing education, in addition to the current number of required credit hours. It is anticipated that the cost of this five hour course will be between \$50 and \$100 for each newly licensed mortgage loan originator

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2c. Utah Residential Mortgage Practices and Licensing Rules.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.
 (a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

- (i) evidence good moral character pursuant to R162-2c-202(1);
 - (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
 - (iii) evidence financial responsibility pursuant to R162-2c-202(3);
 - (iv) obtain a unique identifier through the nationwide database;
 - (v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-licensing education as approved by the division;
 - (vi)(A) successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or
 (B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:
 - (I) approved by the nationwide database; and
 - (II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;
 - (vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:
 - (A) are approved and administered through the nationwide database; and
 - (B) consist of a national test with uniform state content; ~~[component and a Utah-specific state component];~~
 - (viii) request licensure as a mortgage loan originator through the nationwide database;
 - (ix) authorize a criminal background check and submit fingerprints through the nationwide database;
 - (x) authorize the nationwide database to provide the individual's credit report to the division for review;
 - (xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;
 - (xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);
 - (xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and
 - (xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.
- (b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:
- (i) evidence good moral character pursuant to R162-2c-202(1);

- (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
 - (iii) evidence financial responsibility pursuant to R162-2c-202(3);
 - (iv)~~[(A)]~~ successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education;~~[-and~~
~~----- (B) take and pass the Utah-specific state examination component;]~~
 - (v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;
 - (vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);
 - (vii) request licensure as a mortgage loan originator through the nationwide database;
 - (viii) authorize a criminal background check through the nationwide database;
 - (ix) authorize the nationwide database to provide the individual's credit report to the division for review;
 - (x) complete, sign, and submit to the division a social security verification form as provided by the division; and
 - (xi) pay all fees through the nationwide database as required by the division and by the nationwide database.
- (2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:
- (a) evidence good moral character pursuant to R162-2c-202(1);
 - (b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
 - (c) evidence financial responsibility pursuant to R162-2c-202(3);
 - (d) provide to the division:
 - (i) the individual's unique identifier as assigned through the nationwide database;~~[-and]~~
 - (ii) evidence that the individual has taken and successfully; ~~[passed:]~~
 - (A) passed the 20-hour national mortgage loan originator prelicensing course; and
 - (B) passed the mortgage loan originator examination[s] that:
 - (I) meets the requirements of Section 61-2c-204.1(4);
 - (II) ~~[are]~~is approved and administered through the nationwide database; and
 - (III) consists of a national test with uniform state content; ~~[component and a Utah-specific state component];~~
 - (C) completed the division approved 40 hour Utah-specific lending manager prelicensing education within the 12-month period prior to the date of application to the division;
 - (D) applied to the testing contractor designated by the division to sit for the lending manager licensing examination;
 - (E) paid a nonrefundable examination fee to the testing contractor; and
 - (F) passed both the state and national (general) components of the licensing examination;

_____ (e) within the 12-month period preceding the date of submission of a lending manager application to the division, successfully:

_____ (i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form;

_____ (ii) record with the nationwide database a mailing address if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

_____ (iii) authorize a criminal background check and submit fingerprints through the nationwide database;

_____ (iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

_____ (v) if applying for an active license, affiliate with a registered Utah mortgage entity;

_____ (vi) authorize the nationwide database to provide the individual's credit report to the division for review;

_____ (vii) pay the lending manager licensing fee as required by the division and by the nationwide database;

_____ (viii) complete, sign, date, and submit to the division:

_____ (A) the Utah lending manager checklist form as found on the division website or the nationwide database;

_____ (B) the two page lending manager application as provided by the testing contractor;

_____ (C) the social security verification forms as provided by the testing contractor; and

_____ (D) a copy of a paid invoice from the nationwide database showing proof of payment of the lending manager license fee.

_____ (f) provide to the division experience documentation forms to evidence that the applicant has satisfied the experience requirement of section 61-2c-206(1)(d) as follows:

_____ (i) during the five-year period preceding the date of submission of a lending manager license application to the division:

_____ (A) three years full-time experience originating first-lien residential mortgages as a mortgage loan originator as defined in Section 61-2c-102(1)(ff):

_____ (I) under a license issued by a state regulatory agency; or

_____ (II) as an employee of a depository institution; and

_____ (B) evidence of having originated a minimum of 45 first-lien residential mortgages; or

_____ (ii) during the five-year period preceding the date of submission of a lending manager license application to the division:

_____ (A) two years full-time experience originating first-lien residential mortgages as defined in Section 61-2c-102(1)(ff):

_____ (I) under a license issued by a state regulatory agency; or

_____ (II) as an employee of a depository institution;

_____ (B) plus one year of full-time equivalent experience from the optional experience equivalency calculation in Subsection R162-2c-501a or the optional experience table in Subsection R162-2c-501b; and

_____ (C) evidence of having originated a minimum of 30 first-lien residential mortgages; or

_____ (iii) during the 12 years preceding the date of submission of a lending manager license application to the division:

_____ (A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry;

_____ (B) with evidence of having directly supervised during the ten years described in this Subsection no fewer than five licensed or registered loan originators; and

_____ (C) although the five individuals licensed or registered as described in this Subsection may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection; and

_____ (D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.

~~_____ (e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:~~

~~_____ (i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A):~~

~~_____ (I) under a license issued by a state regulatory agency; or~~

~~_____ (II) as an employee of a depository institution; and~~

~~_____ (B) evidence of having originated a minimum of 45 first-lien residential mortgages;~~

~~_____ (ii)(A)(I) two years full-time experience as described in this Subsection (2)(c)(i)(A); and~~

~~_____ (II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and~~

~~_____ (B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and~~

~~_____ (II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b; or~~

~~_____ (iii)(A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry within the past 12 years;~~

~~_____ (B) evidence of having directly supervised during the ten years described in this Subsection (2)(c)(iii)(A) no less than five licensed or registered loan originators;~~

~~_____ (C) Although the five individuals licensed or registered as described in this Subsection (2)(c)(iii)(B) may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection (2)(c)(iii)(A); and~~

~~_____ (D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.~~

~~_____ (f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific LM prelicensing education as certified by the division;~~

~~_____ (g) take and pass a lending manager examination as approved by the commission;]~~

~~_____ (g) Failure to document acceptable experience in one of the three methods described in Subsection (f) will result in the denial of the lending manager application. All application fees are nonrefundable.~~

~~_____ (h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;~~

~~_____ (i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);~~

~~_____ (j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and]~~

~~(h)(iii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:~~

~~[(A)](i) the principal lending manager;~~

~~[(B)](ii) an associate lending manager; or~~

~~[(C)](iii) a branch lending manager.];]~~

~~[(k) authorize a criminal background check and submit fingerprints through the nationwide database;~~

~~(l) authorize the nationwide database to provide the individual's credit report to the division for review;~~

~~(m) complete, sign, and submit to the division a social security verification form as provided by the division; and~~

~~(n) pay all fees through the nationwide database as required by the division and by the nationwide database.~~

~~(o) Notwithstanding the requirement in this Subsection 201(2)(c) that an applicant for licensure as a lending manager provide evidence of the required experience prior to obtaining approval from the division to take the Utah-specific lending manager prelicensing education, an applicant may request approval from the division for approval to take the prelicensing education upon applicant's written affirmation that:~~

~~(i) applicant's current employment status could be affected by documenting applicant's experience;~~

~~(ii) applicant requests approval to proceed with the Utah-specific prelicensing education despite not having documented the necessary experience; and~~

~~(iii) applicant understands that if division approval is granted, applicant assumes the risk of the time and expense of the prelicensing education, testing, and application fee with no assurance that applicant's experience will qualify applicant for licensure as a lending manager.]~~

~~(i) Deadlines.~~

~~(i) If an individual passes one test portion of the lending manager examination but fails the other, the individual may retake and pass the failed portion of the exam within 90 days of the date on which the individual achieves a passing score on the first portion of the exam.~~

~~(ii) An application for licensure shall be submitted:~~

~~(A) within 90 days of the date on which the individual achieves passing scores on both examination portions; and~~

~~(B) within 12 months of the date on which the individual completes the pre-licensing education.~~

~~(iii) If any deadline in this Subsection R162-2c-201(2) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.~~

~~(3) Mortgage entity.~~

~~(a) To obtain a Utah license to operate as a mortgage entity, a person shall:~~

~~(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);~~

~~(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);~~

~~(iii) register any other trade name with the Division of Corporations and Commercial Code;~~

~~(iv) register the entity in the nationwide database by:~~

~~(A) submitting an MU1 form that includes:~~

~~(I) all required identifying information;~~

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(IV) the name of any individuals who may serve as control persons;

(V) the entity's registered agent; and

(VI) any other assumed business name or trade name under which the entity will operate;

(B) submitting a license request for any assumed business name listed in the "Other Trade Name" section of the MU1 form; and

(C) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers a branch office pursuant to this Subsection (4) shall ensure that any licensed trade names of the entity that are used from the branch office are listed in the "Other Name" section of the entity MU1 form.

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

(5) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(6) Expiration of test results.

~~(a) [Scores for the mortgage loan originator licensing examination shall be valid for five years.~~

~~(b)]Scores for the LM exam shall be valid for 90 days.~~

~~[(7) Incomplete LM application.~~

~~(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:~~

~~(i) an applicant has made a good faith attempt to submit a completed application; but~~

~~(ii) requires more time to provide missing documents or to obtain additional information.~~

~~(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.]~~

~~(7)[(8)] Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.~~

~~(8)[(9)] Other trade names.~~

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license[:

~~(I) in the renewal period beginning November 1, 2015; and~~

~~(H)] every fifth year following the renewal period beginning November 1, 2015.~~

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license[:

~~(i) in the renewal period beginning November 1, 2015; and~~

~~(ii)] every fifth year following the renewal period beginning November 1, 2015.~~

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the

calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) ~~[beginning with the 2014 renewal,]~~ a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(C) In addition to other required continuing education, a mortgage loan originator licensed with the State of Utah on or after May 8, 2017, shall complete a division-approved continuing education course for new loan originators prior to renewing at the end of the first full calendar year of licensure.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved courses for new loan originators and on Utah law specified in Subsections (3)(a)(i)(A) and (3)(a)(i)(C), for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); and

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: ~~[September 4, 2015]~~ 2017

Notice of Continuation: March 31, 2015

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)

Education, Administration
R277-122
Board of Education Procurement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41646

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new Rule R277-122 is to provide standards and procedures for the Utah State Board of Education (Board) to be an independent procurement authority. This new rule is in response to S.B. 127 from the 2017 General Session, which designates the Board as an independent procurement authority.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-122 provides for the Board to adopt and incorporate by reference certain provisions of Title R33, Purchasing and General Services; provides for a Board employee to be the manager of procurement; designates the manager of procurement as the head of the procurement unit for the Board; and provides exceptions to Title R33.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 63G, Chapter 6a

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds Title R33, Purchasing and General Services, published by Office of Administrative Rules, 04/01/2017

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be some increased costs incurred by the Board as a result of becoming its own procurement unit. Any costs and responsibilities associated with implementation of this rule will be absorbed within existing budgets and with existing staff.
- ◆ **LOCAL GOVERNMENTS:** This new rule affects the state. There is likely no anticipated cost or savings to local government resulting from implementation of this rule.
- ◆ **SMALL BUSINESSES:** This new rule affects the state. There is likely no anticipated cost or savings to small businesses resulting from implementation of this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule affects the state. There is likely no anticipated cost or savings to persons other than small businesses, businesses, or local government entities resulting from implementation of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule affects the state. There is likely no compliance costs for affected persons resulting from implementation of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

R277. Education, Administration.

R277-122. Board of Education Procurement.

R277-122-1. 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 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 63G, Chapter 6a, Utah Procurement Code.

(2) The purpose of this rule is to adopt and incorporate by reference Title R33, Purchasing and General Services, with exceptions as described in this rule.

R277-122-2. Definitions.

(1) "Manager of procurement" means a Board employee designated by the Board to be the head of the procurement unit as described in Section R277-122-4 and Section R33-1-3.

(2) "Responsible" means the same as that term is defined in Subsection 63G-6a-103 (75).

(3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103 (76).

R277-122-3. Incorporation of Title R33 With Exceptions.

(1) The Board adopts and incorporates by reference Title R33, Purchasing and General Services, as in effect on April 1, 2017, with the exceptions described in this section.

(2) The Board does not adopt Section R33-8-101b.

(3) The Board adopts Section R277-122-5 in place of Section R33-9-103.

(4) The Board adopts Section R277-122-6 in place of Section R33-12-201.

(5) The Board adopts Section R277-122-8 in place of Section R33-12-608.

(6) The Board adopts Section R277-122-9 in place of Subsections:

(a) R33-16-101a (2)(a); and

(b) R33-16-301 (4).

R277-122-4. Head of the Procurement Unit Designated.

The Board designates the manager of procurement as the head of the procurement unit.

R277-122-5. Cancellation Before Award.

(1) A solicitation may be cancelled prior to a contract award if the head of the procurement unit determines the cancellation is:

(a) in the best interest of the Board; and
(b) supported by a reasonable and good faith justification.
(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

R277-122-6. Establishment of Terms and Conditions.

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

R277-122-7. Requirements for Cost or Pricing Data.

(1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:

(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:

- (i) the date the contract is signed by both parties; or
- (ii) an earlier date agreed to by both parties that is:

(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

- (i) vendor quotations;
- (ii) nonrecurring costs;
- (iii) information on changes in production methods and in production or purchasing volume;
- (iv) data supporting projections of business prospects and objectives and related operations costs;
- (v) unit-cost trends such as those associated with labor efficiency;
- (vi) make-or-buy decisions;
- (vii) estimated resources to attain business goals; or
- (viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of \$50,000.00 or greater if the contract price is not established by:

- (a) adequate price competition;
- (b) established catalogue or market prices; or
- (c) law or regulation.

R277-122-8. Use of Federal Cost Principles.

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

R277-122-9. Grounds for Protest -- Intervention in a Protest.

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

(b) a provision of the solicitation alleged to be:

- (i) unduly restrictive;
- (ii) anticompetitive; or
- (iii) unlawful;

(c) an alleged material error made by the evaluation committee or conducting procurement unit; or

(d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

(2) A motion to intervene in a post-award protest may only be made by the announced awardee.

(3) A person may intervene in a pre-award protest, if the person's proposal:

- (a) was evaluated;
- (b) found to be responsive; and

(c) the head of the procurement unit finds the person to be responsible.

KEY: procurement, efficiency

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 63G-6a

Education, Administration
R277-474-3
General Provisions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41647
 FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to S.B. 196 from the 2017 General Session that repeals language prohibiting the advocacy of homosexuality in health instruction and provides language that prohibits instruction that advocates premarital or extramarital sexual activity.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-474-3 removes language in the rule that prohibits advocacy of homosexuality in health education and adds language in the rule that prohibits instruction that advocates premarital or extramarital sexual activity consistent with S.B. 196 (2017).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Subsection 53A-1-401(3) and Subsection 53A-13-101(1)(c)(ii)(B)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be some increased costs incurred by the Board as a result of changes to the General Core in health instruction. Any costs and responsibilities associated with implementation of this rule and changes to

the General Core will be absorbed within existing budgets and with existing staff.

◆ LOCAL GOVERNMENTS: There may be some increased costs incurred by school districts and charter schools as a result of changes to the General Core in health instruction. Any costs and responsibilities associated with implementation of this rule and changes to the General Core will be absorbed within existing budgets and with existing staff.

◆ SMALL BUSINESSES: Changes to this rule affect the Utah Board of Education (Board) as it will need to amend the General Core to be consistent with state law. There are likely no costs or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes to this rule affect the Board as it will need to amend the General Core to be consistent with state law. There are likely no costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to this rule affect the Board as it will need to amend the General Core to be consistent with state law. There are likely no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new language.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

R277. Education, Administration.

R277-474. School Instruction and Human Sexuality.

R277-474-3. General Provisions.

A. The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction:

(1) the intricacies of intercourse, sexual stimulation or erotic behavior;

(2) the advocacy of [~~homosexuality~~]premarital or extramarital sexual activity; or

(3) the advocacy or encouragement of the use of contraceptive methods or devices[~~or~~

~~(4) the advocacy of sexual activity outside of marriage].~~

B. Educators are responsible to teach the values and information identified under Section 53A-13-101(4).

C. Utah educators shall follow all provisions of federal and state law including parent/guardian notification and prior written parental consent requirements under Sections 76-7-322 and 76-7-323 in teaching any aspect of human sexuality.

[~~D. Course materials and instruction shall be free from religious, racial, ethnic, and gender bias.~~]

KEY: schools, sex education

Date of Enactment or Last Substantive Amendment: [~~June 8, 2015~~]**2017**

Notice of Continuation: May 1, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-101(1)(c)(ii)(B); 53A-1-401(3)

Education, Administration **R277-487** Public School Data Confidentiality and Disclosure

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41648

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to H.B. 358 from the 2016 General Session, and S.B 163 and S.B 102 from the 2017 General Session, that enact provisions regarding student data privacy and access to education records.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide standards and procedures for Utah Board of Education (Board) and local education agency (LEA) employees to ensure student data privacy consistent with the Utah Student Privacy Act. The amendments include provisions for required training; identification of local school board or charter school governing board employees who are authorized to access education records; and prohibits local school board, charter school governing board, and public school employees from sharing an education record with an employee who is not authorized.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and

Section 53A-1-411 and Subsection 53A-13-301(4) and Subsection 53A-8a-410(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments to this rule require the Board to develop student data privacy policies and training to ensure student data privacy statewide. The Board received an appropriation during the 2017 General Session to cover the costs of the new program.
- ◆ **LOCAL GOVERNMENTS:** The amendments to this rule require LEAs to develop student data privacy policies and training to ensure student data privacy. Training and other compliance at the local level will likely be performed by existing employees and within existing budgets.
- ◆ **SMALL BUSINESSES:** The amendments to this rule require training to ensure student data privacy and apply to the public education system, so there will likely be no result cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule require training to ensure student data privacy, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Training will be performed at the state and local level which will likely be performed by existing employees and within existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule require training to ensure student data privacy, which likely will not result in any compliance costs for affected persons. Training will be performed at the state and local level which will likely be performed by existing employees and within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new language.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

R277. Education, Administration.

R277-487. Public School Data Confidentiality and Disclosure.

R277-487-[2]1. Authority and Purpose.

- ~~[A-](1)~~ This rule is authorized ~~[under]~~ by:
 - ~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~;~~ by];
 - ~~(b)~~ Section 53A-1-401~~(3)~~, which allows the Board to make rules ~~[in accordance with its responsibilities]~~ to execute the Board's duties and responsibilities under the Utah Constitution and state law;~~[by]~~
 - ~~(c)~~ Subsection 53A-13-301(4), which directs ~~that~~ the Board ~~[to]~~ may make[s] rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records;~~[by]~~
 - ~~(d)~~ Subsection 53A-8a-410(4), which directs ~~that~~ the Board ~~[to]~~ may make rules to ensure the privacy and protection of individual evaluation data; and~~[by]~~
 - ~~(e)~~ Section 53A-1-411, which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues.

- ~~[B-](2)~~ The purpose of this rule is to:
 - ~~(1)~~a) provide for appropriate review and disclosure of student performance data on state administered assessments as required by law;
 - ~~(2)~~b) provide for adequate and appropriate review of student performance data on state administered assessments to professional education staff and parents of students;
 - ~~(3)~~c) ensure the privacy of student performance data and personally identifiable student information, as directed by law;
 - ~~(4)~~d) provide an online education survey conducted with public funds for Board review and approval; and
 - ~~(5)~~e) provide for appropriate protection and maintenance of educator licensing data.

R277-487-[1]2. Definitions.

- ~~[A-~~ A. "Board" means the Utah State Board of Education.]
- ~~(1)~~ "Association" has the same meaning as that term is defined in Subsection 53A-1-1601(3).
- ~~[B-](2)~~ "Chief Privacy Officer" means a ~~[USOE]~~ Board employee designated by the Board as primarily responsible to:
 - ~~(a)~~ oversee and~~[direct the DGPB to]~~ carry out the responsibilities of this rule~~;~~ and
 - ~~(b)~~ direct the development of materials and training about student and public education employee privacy~~[and security]~~ standards for the Board and LEAs, including~~[FERPA, for the USOE and LEAs];~~
 - ~~(i)~~ FERPA; and
 - ~~(ii)~~ the Utah Student Data Protection Act, Title 53A, Chapter 1, Part 14.
- ~~[C-](3)~~ "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.

~~(4)~~ "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "~~{~~CACTUS~~}~~" means the electronic file maintained and owned by the ~~[USOE]~~Board on all licensed Utah educators, ~~[The file]~~ which includes information such as:

- ~~(1)~~a) personal directory information;
- ~~(2)~~b) educational background;
- ~~(3)~~c) endorsements;
- ~~(4)~~d) employment history; and
- ~~(5)~~e) a record of disciplinary action taken against the educator.

~~(5)~~ "Confidentiality" refers to an obligation not to disclose or transmit information to unauthorized parties.

~~E.~~ "Data Governance/Policy Board (DGPB)" means a board composed of USOE and LEA employees, as directed by the Board, whose purpose is to resolve public education data and process issues, make policy decisions, review all research requests for public education data, and fill only those requests that are appropriate and comply with the standards in this rule.]

~~(6)~~ "Data governance plan" has the same meaning as defined in Subsection 53A-1-1402(9).

~~F.~~(7) "Data security protections" means protections developed and initiated by the ~~[Chief Privacy Officer and the DGPB]~~Superintendent that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.

~~G.~~ "Disciplinary action" means any lesser action taken by UPPAC which does not materially affect a licensed educator's license and licensing action taken by the Board for suspension or revocation.]

~~(8)~~ "Disclosure" includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, electronically, or by any other communication method.

~~H.~~(9) "Enrollment verification data" includes:

- ~~(1)~~a) a student's birth certificate or other verification of age;
- ~~(2)~~b) verification of immunization or exemption from immunization form;
- ~~(3)~~c) proof of Utah public school residency;
- ~~(4)~~d) family income verification; or
- ~~(5)~~e) special education program information, including:
 - ~~(a)~~i) an individualized education program;
 - ~~(b)~~ii) a Section 504 accommodation plan; or
 - ~~(c)~~iii) an English language learner plan.

~~I.~~(10) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, ~~a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference].~~

~~(11)~~ "Information Technology Systems Security Plan" means a plan incorporating policies and process for:

- ~~(a)~~ system administration;
- ~~(b)~~ network security;
- ~~(c)~~ application security;
- ~~(d)~~ endpoint, server, and device security;
- ~~(e)~~ identity, authentication, and access management;
- ~~(f)~~ data protection and cryptography;
- ~~(g)~~ monitoring, vulnerability, and patch management;

~~(h)~~ high availability, disaster recovery, and physical protection;

~~(i)~~ incident responses;

~~(j)~~ acquisition and asset management; and

~~(k)~~ policy, audit, and e-discovery training.

~~J.~~(12) "LEA" ~~[or "local education agency"~~ means a school district, charter school or]includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~(13)~~ "Metadata dictionary" has the same meaning as defined in Subsection 53A-1-1402(16).

~~K.~~(14) "Personally identifiable student [information]data" ~~[means the student's name; a personal identifier, such as the student's social security number or student number; other indirect identifiers such as the student's date of birth or place of birth; other information that, alone or in combination, is linked or linkable to a specific student and enables a person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably knows is entitled to the requested information.]~~has the same meaning as defined in Subsection 53A-1-1402(20).

~~(15)(a)~~ "Student data advisory groups" has the same meaning as described in Subsection 53A-1-1403(3).

~~(16)~~ "Student data manager: means the individual at the LEA level who:

~~(a)~~ is designated as the student data manager by an LEA under Section 53A-1-1404;

~~(b)~~ authorizes and manages the sharing of student data;

~~(c)~~ acts as the primary contact for the Chief Privacy Officer;

~~(d)~~ maintains a list of persons with access to personally identifiable student information; and

~~(e)~~ is in charge of providing annual LEA staff and volunteer training on data privacy.

~~L.~~(17)(a) "Student information" means materials, information, records and knowledge that an LEA possesses or maintains~~[, or both,]~~ about individual students.

~~(b)~~ Student information is broader than student records and personally identifiable student information and and may include information or knowledge that school employees possess or learn in the course of their duties.

~~M.~~(18) "Student performance data" means data relating to student performance, including:

~~(a)~~ data on state, local and national assessments~~[;];~~

~~(b)~~ course-taking and completion~~[;];~~

~~(c)~~ grade-point average~~[;];~~

~~(d)~~ remediation~~[;];~~

~~(e)~~ retention~~[;];~~

~~(f)~~ degree, diploma, or credential attainment~~[;];~~ and

~~(g)~~ enrollment~~[;]~~ and demographic data.

~~N.~~ "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.]

~~O.~~(19) "Third party [provider]contractor" ~~[means a third party who provides educational services on behalf of an LEA]~~has the same meaning as defined in Subsection 53A-1-1402(26).

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

R277-487-3. Data Privacy and Security Policies.~~_____~~ **A. Board Responsibilities:**

(1) The ~~[Chief Privacy Officer and DGPB]~~ Superintendent shall develop resource materials for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data~~[, as defined in FERPA].~~

(2) The ~~[Chief Privacy Officer and DGPB]~~ Superintendent shall make the materials developed in accordance with Subsection (1) available to each LEA.

~~_____~~ **B. LEA Responsibilities:**

~~(1) An LEA is responsible for the collection, maintenance, and transmission of student data.~~

~~(2) An LEA shall establish policies and provide appropriate training for employees regarding the confidentiality of student performance data and personally identifiable student information.~~

~~(3) An LEA shall provide the policies described in R277-487-3B(2) to parents of students affected by the policies, as well as post the policies for the public on the LEA's website.]~~

~~(3) An LEA or public school may not be a member of or pay dues to an association that is not in compliance with:~~

~~(a) FERPA;~~

~~(b) Title 53A, Chapter 1, Part 14, Student Data Protection Act;~~

~~(c) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and~~

~~(d) this R277-487.~~

~~(4) An LEA shall comply with Title 53A, Chapter 1, Part 14, Student Data Protection Act.~~

~~(5) An LEA shall comply with Section 53A-13-303.~~

~~(6) An LEA is responsible for the collection, maintenance, and transmission of student data.~~

~~([4]7) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student information are collected, maintained, and transmitted:~~

~~(a) in a secure manner; and~~

~~(b) consistent with sound data collection and storage procedures, established by the LEA.~~

~~([5]8) An LEA may contract with a third party provider to collect, maintain, and have access to school enrollment verification data or other student data if:~~

~~(a) the third party [provider]contractor meets the definition of a school official under 34 CFR 99.31 (a)(1)(i)(B);~~

~~(b) the contract between the LEA and the third party [provider]contractor includes a provision that the data is the property of the [LEA]student under Section 53A-1-1405; and~~

~~(c) the LEA monitors and maintains control of the data.~~

~~([6]9) If an LEA contracts with a third party [provider]contractor to collect and have access to the LEA's data as described in [R277-487-3B(5)]Subsection (6), the LEA shall notify a student and the student's parent or guardian in writing that the student's data is collected and maintained by the third party [provider]contractor.~~

~~_____ (7) As required in Section 53A-13-301, an LEA shall notify the parent or guardian of a student if there is a release of the student's personally identifiable student data due to a security breach.]~~

~~_____ (10) An LEA shall publicly post the LEA's definition of directory information and describe how a student data manager may share personally identifiable information that is directory information.~~

~~_____ (11) By July 1 annually, an LEA shall enter all student data elements shared with third parties into the Board's metadata dictionary.~~

~~_____ (12) An LEA shall report all unauthorized disclosures of student data by third parties to the Superintendent.~~

~~_____ (13) An LEA shall provide the Superintendent with a copy or link to the LEA's data governance plan by October 1 annually.~~

~~_____ (14) An LEA shall provide the Superintendent with a copy or link to the LEA's Information Technology Systems Security Plan by October 1 annually.~~

~~_____~~ **C. Public Education Employee and Volunteer Responsibilities:**

~~([1]15) All public education employees, aides, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student information.~~

~~([2]16) All public education employees, aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student information.~~

~~([3]17) An employee, aide, or volunteer may not share, disclose, or disseminate passwords for electronic maintenance of:~~

~~(a) student performance data; or~~

~~(b) personally identifiable student information.~~

~~([4]18) A public education employee licensed under Section 53A-6-104 may only access or use student information and records if the public education employee accesses the student information or records consistent with the educator's obligations under R277-515[, Utah Educator Standards].~~

~~([5]19) The Board may discipline a licensed educator [A public education employee may be disciplined] in accordance with licensing discipline procedures if the [public education employee]educator violates this R277-487.~~

~~_____ (20) An LEA shall annually provide a training regarding the confidentiality of student data to any employee with access to education records as defined in FERPA.~~

~~_____ (21) A school employee shall annually submit a certified statement to the LEA's student data manager, which certifies that the school employee completed the LEA's required student privacy training and understands student privacy requirements.~~

R277-487-4. Transparency.

~~[A-](1) The [Chief Privacy Officer working with the DGPB]Superintendent shall recommend [USOE-]policies for Board approval and model policies for LEAs regarding [the state's] student data systems.~~

~~[B-](2) [The Chief Privacy Officer shall ensure that the rules/policies address]A policy prepared in accordance with Subsection (1) shall include provisions regarding:~~

~~([1]a) accessibility [to]by parents, students, and the public [of the]to student performance data;~~

~~([2]b) authorized purposes, uses, and disclosures of data maintained by the Superintendent [and]or an LEA[s];~~

([3]c) the rights of parents and students regarding their personally identifiable information under state and federal law;

([4]d) parent, student, and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and

([5]e) contact information for parents and students to request student and public school information from an LEA[s] consistent with the law.

R277-487-5. [Additional] Responsibilities of Chief Privacy Officer [and DGPPB].

[A-](1) The Chief Privacy Officer;

(a) may recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data[-];

[B-](b) [~~The Chief Privacy Officer~~] shall supervise regular privacy and security compliance audits, following initiation by the Board[-];

[C-](c) [~~The Chief Privacy Officer and the DGPPB~~] shall have responsibility for identification of threats to data security protections[-];

[D-](d) [~~The Chief Privacy Officer and the DGPPB~~] shall develop and recommend policies [~~for the Superintendent~~] to the Board and model policies for LEAs for:

(i) protection of personally identifiable student information;

(ii) consistent wiping or destruction of devices when devices are discarded by public education entities[-]; and

[E-](iii) [~~The Chief Privacy Officer and the DGPPB shall develop USOE and model LEA policies for the training of staff for~~] appropriate responses to suspected or known breaches of data security protections[-];

(e) shall conduct training for Board staff and LEAs on student privacy; and

(f) shall develop and maintain a metadata dictionary as required by Section 53A-1-1403.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, a school district[s], school[s], [and] or other public education [agencies or institutions] agency or institution in the state, including data provided by contractors, may not be sold or used for marketing purposes, or targeted advertising as defined in Subsection 53A-1-1402(26) [(except with regard to authorized uses [or] of directory information not obtained through a contract with an educational agency or institution)].

R277-487-7. Public Education Research Data.

[A-](1) The Superintendent may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

([1]2) The Superintendent shall use reasonable methods to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board [~~(IRB)~~] or "IRB."

([2]3) The Superintendent may post [A] aggregate de-identified student assessment data [is available through the USOE] to the Board website.

(4) The Superintendent shall ensure that personally identifiable student information is protected.

([3]5) The Superintendent;

(a) is not obligated to fill every request for data and shall establish procedures to determine which requests will be filled or to assign priorities to multiple requests; [~~The Superintendent shall respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act. In filling data requests, the Superintendent]~~

(b) may give higher priority to requests that will help improve instruction in Utah's public schools[-]; and

[~~(4) The Superintendent]~~

(c) may charge a fee to prepare data or to deliver data, particularly if the preparation requires original work; [~~The Superintendent shall comply with Section 63G-2-203 in assessing fees for responses to GRAMA requests].~~

([5]6) [~~The~~] A researcher or organization shall provide a copy of the report or publication produced using [~~USOE~~] Board data to the [~~USOE~~] Superintendent at least 10 business days prior to the public release.

[~~B. Student data and information:~~]

(7) Requests for data that disclose student information [~~shall~~] may only be provided in accordance with [~~the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; such responses]~~ Section 53A-1-1409 and FERPA, incorporated herein by reference, and may include:

([1]a) student data that are de-identified, meaning that a reasonable person in the school community who does not have personal knowledge of the relevant circumstances could not identify student(s) with reasonable certainty;

([2]b) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities; [~~For example, reporting test scores for a race subgroup that has a count, also known as n-size, of less than 10 could enable someone to identify the actual students and shall not be published]; or~~

([3]c) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

[~~C. Licensed educator information:~~]

[~~(1) The Superintendent shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).~~]

(2) The Superintendent may release information/data:

(a) consistent with the purposes of CACTUS;

(b) if the requester accepts the confidentiality protections established by the Superintendent; and

(c) if the research may provide a benefit for public education in Utah, as determined by the Superintendent.[-]

[D-](8) Recipients of [~~USOE~~] Board research data shall sign a [~~USOE-designated~~] confidentiality agreement, if required by the Superintendent.

[E-](9) Either [~~F~~] the Board or the Superintendent may commission research or may approve research requests.

(10) Request for records under Title 63G, Chapter 2, Government Records Access and Management Act, are not subject to this Section R277-487-7.

R277-487-8. Public Education Survey Data.

~~[A-](1) The [Chief Privacy Officer, working with the DGPB,] Superintendent shall approve statewide education surveys administered with public funds through the [USOE]Board or through a contract [issued]approved by the [USOE]Board, as required under Section 53A-1-411.~~

~~[B-](2) Data obtained from [Board]a statewide survey[s] administered with public funds under Subsection (1) to the extent not subject to Section 53A-1-1405 are the property of the Board.~~

~~[C-](3) The Superintendent shall make [D]data obtained from [Board statewide surveys administered with public funds shall be made]a survey developed in accordance with Subsection (1) available [as follows:]only if the data is shared in such a manner as to protect the privacy of students and educators in accordance with federal and state law.~~

~~[(1) Survey data made available by the Board shall protect the privacy of students in accordance with FERPA.~~

~~[(2) The Superintendent shall ensure that survey data about educators is provided to a requester in a manner that protects the privacy of individual educators consistent with State law.]~~

R277-487-9. [Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS) Data, Confidentiality, and Appropriate Disclosure]CACTUS Data.

~~[A-](1) [CACTUS]The Board maintains information on all licensed Utah educators in CACTUS, including information classified as private, controlled, or protected under GRAMA.~~

~~[B-](2) The Superintendent shall open a CACTUS file for a licensed Utah educator when[-(1)] the individual initiates a [USOE]Board background check[-,or].~~

~~[(2) the USOE receives a paraprofessional license application from an LEA.~~

~~C. The data in CACTUS may only be changed as follows:]~~

~~(3) Authorized Board staff may update CACTUS data as directed by the Superintendent.~~

~~[(1)4] Authorized [USOE staff or authorized-]LEA staff may change demographic data and update data on educator assignments in CACTUS for the current school year only.~~

~~[(2) Authorized USOE staff may update licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.]~~

~~[(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.]~~

~~[D-](5) A licensed individual may view his own personal data, but[- An individual] may not change or add data in CACTUS except under the following circumstances:~~

~~(a) A licensee may change the licensee's contact and demographic information at any time;~~

~~[(1) A licensed individual may change his demographic data when renewing his license.]~~

~~[(2)b] An employing LEA may correct[A licensed individual shall contact his employing LEA for the purpose of correcting demographic or] a current educator's assignment data on behalf of a licensee.~~

~~[(3)c] A [licensed individual]licensee may petition the [USOE]Board for the purpose of correcting any errors in [his]the licensee's CACTUS file.~~

~~[E-](6) The Superintendent shall include an [F]individual[s] currently employed by a public or private school[s] under a letter[s] of authorization or as an intern[s-are included] in CACTUS.~~

~~[F-](7) The Superintendent shall include an [F]individual[s] working in an LEA[s] as a student teacher[s-are included] in CACTUS.~~

~~[G- Designated individuals have access to CACTUS data:]~~

~~[(1)8] The Superintendent shall provide [F]training and ongoing support [shall be provided-]to authorized CACTUS users[designated individuals prior to granting access].~~

~~[(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.]~~

~~[(3)9] For employment or assignment purposes only, authorized LEA staff members may:~~

~~(a) access data on individuals employed by the[ir own] LEA[-or data on licensed individuals who do not have a current assignment in CACTUS-]; or~~

~~[(4)b] [Authorized LEA staff may also] view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.~~

~~[(5)10] CACTUS information belongs solely to the [USOE]Board. [The USOE shall make the final determination of information included in or deleted from CACTUS.]~~

~~[(6)g] The Superintendent may release data within CACTUS [data may only be released-]in accordance with the provisions of [GRAMA]Title 63G, Chapter 2, Government Records Access and Management Act.~~

R277-487-10. Educator Evaluation Data.

~~[A-](1)(a) The Superintendent [shall]may provide classroom-level assessment data to administrators and teachers in accordance with federal and state privacy laws.~~

~~(b) School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.~~

~~[B-](2) Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, [at]by the [USOE]Board.~~

~~[C-](3) An LEA[s] shall designate employees who may have access to educator evaluation records.~~

~~[D-](4) An LEA[s] may not release or disclose student assessment information that reveals educator evaluation information or records.~~

~~[E-](5) An LEA[s] shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.~~

[R277-487-11. Training and Technical Assistance.

~~A. The Chief Privacy Officer and DGPB shall develop training for the Board, the USOE and LEAs.~~

~~B. The Chief Privacy Officer and DGPB shall develop model policies, as resources permit.]~~

R277-487-1[2]1. Application to Third Party[-Providers and] Contractors.

~~[A-](1) The [USOE]Board and LEAs shall set policies that govern a third party [provider or-]contractor's access to~~

personally identifiable student data and public school enrollment verification data consistent with Section 53A-1-1401 et seq.

~~[B.](2)~~ An LEA may release [S]student information and public school enrollment verification data to a third party ~~[provider]contractor~~ if:

(1)a the release is allowed by, and released in accordance with, Section 53A-1-1409 and FERPA, incorporated herein by reference, and its implementing regulations; and

(2)b ~~[if]~~the LEA complies with the requirements of Subsection R277-487-3[B](6).

~~[C. CACTUS or public education employee information may only be released consistent with state law, with express permission of the licensed individual or employee, or with the purposes for which the information was entered into CACTUS or a similar employee database.]~~

~~[D. Sanctions for violations of authorized use and release of student and employee data:]~~

(1)4 All [USOE]Board contracts shall include sanctions for contractors or third party providers who violate provisions of state policies regarding unauthorized use and release of student and employee data.

(2)5 The Superintendent shall recommend that LEA policies include sanctions for contractors ~~[or third party providers]~~ who violate provisions of federal or state privacy law and LEA policies regarding unauthorized use and release of student and employee data.

R277-487-1[3]2. Annual Reports by Chief Privacy Officer ~~and DGPPB~~.

~~[A.](1)~~ The Chief Privacy Officer ~~with the assistance of DGPPB,~~ shall submit to the Board an annual report ~~[about]~~ regarding student data.

~~[B.](2)~~ The public report shall include:

(1)a information about the implementation of this rule;

(2)b information about research studies begun or planned using student information and data;

(3)c identification of significant threats to student data privacy and security;

(4)d a summary of data system audits; and

(5)e recommendations for further improvements specific to student data security and the systems that are necessary for accountability in Board rules or legislation.

R277-487-13. Data Security and Privacy Training for Educators.

(1) The Superintendent shall develop a student and data security and privacy training for educators.

(2) The Superintendent shall make the training developed in accordance with Subsection (1) available through UEN.

(3) Beginning in the 2018-19 school year, an educator shall complete the training developed in accordance with Subsection (1) as a condition of re-licensure.

KEY: students, records, confidentiality

Date of Enactment or Last Substantive Amendment: ~~[July 8, 2015]2017~~

Notice of Continuation: November 14, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-301(4); 53A-1-401(3); 53A-1-411; 53A-8a-410(4)

**Environmental Quality, Air Quality
R307-122
General Requirements: Heavy Duty
Vehicle Tax Credit**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41626

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2017 General Session, the Legislature passed S.B. 24, which amended the definition of a "qualified heavy duty vehicle" to include heavy duty vehicles that have hydrogen-electric and 100% electric drivetrains. This amendment updates Rule R307-122 so that it matches the current statute.

SUMMARY OF THE RULE OR CHANGE: Rule R307-122 has been amended to include references that are consistent with the most recent changes in Section 59-10-1033. This includes adding "100% electric drivetrain" and "hydrogen-electric drivetrain" wherever the rule previously mentioned "OEM natural gas vehicle."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104 and Section 59-10-1033 and Section 59-7-618

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The proposed amendment does not impact the state budget because the Utah Code already includes the new definition of a "qualified heavy duty vehicle." Rule R307-122 only provides procedures that help implement the program that is already required by Section 59-10-1033. Also, the fiscal note attached to S.B. 24, which prompted this rule amendment, states a cost of \$0. The cost of adding new types of vehicles to the "qualified vehicle" list is zero because there is a dollar limit on the total money spent on tax credits that was not impacted by S.B. 24. Once the money has been spent, there are no longer any tax credits awarded during that year, regardless of which type of vehicles apply for the credit.

♦ **LOCAL GOVERNMENTS:** The proposed amendment does not impact money spent by local governments because the Utah Code already includes the new definition of a "qualified heavy duty vehicle." Rule R307-122 only provides procedures that help implement the program that is already required by Section 59-10-1033. Also, the fiscal note attached to S.B. 24, which prompted this rule amendment, states a cost of \$0. The cost of adding new types of vehicles to the "qualified vehicle" list is zero because there is a dollar limit on the total money spent on tax credits that was not impacted by S.B. 24. Once the money has been spent, there

are no longer any tax credits awarded during that year, regardless of which type of vehicles apply for the credit.

♦ **SMALL BUSINESSES:** This rule amendment will not cost small businesses any money because the rule is merely a set of procedures that must be followed to qualify for a tax credit for owning a "qualified heavy duty vehicle." However, the rule could help small businesses save money if they take advantage of the tax credit. The tax credit is worth up to \$25,000 (Subsection 59-10-1033(2)(a)).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will not cost "other persons" any money because the rule is merely a set of procedures on obtaining a tax credit for owning a "qualified heavy duty vehicle." However, the rule could help people who are not small businesses, businesses, or local government entities save money if they take advantage of the tax credit. The tax credit may be as high as \$25,000 (Subsection 59-10-1033(2)(a)).

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated for affected persons because the rule will still be implemented in the same way as before, which did not include any compliance costs. The only change is that there are now more people who are eligible to receive the tax credit. People only have to comply with this rule if they want to receive the tax credit. If a person does comply with the rule and receives a tax credit, then they will end up saving money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will not cost businesses any money because the rule is merely a set of procedures that must be followed to qualify for a tax credit for owning a "qualified heavy duty vehicle." However, the rule could help businesses save money if they take advantage of the tax credit. The tax credit is worth up to \$25,000 (Subsection 59-10-1033(2)(a)).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mat Carlile by phone at 801-536-4116, by FAX at 801-536-4136, or by Internet E-mail at mcarlile@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-122. General Requirements: Heavy Duty Vehicle Tax Credit.

R307-122-1. Authorization and Purpose.

(1) This rule is authorized by Sections 59-7-618 and 59-10-1033. These statutes establish criteria and definitions used to determine eligibility for an income tax credit.

(2) R307-122 establishes procedures to provide proof of a qualified purchase, in accordance with 59-7-618(6)(a) or 59-10-1033(6)(a), to the director for a qualified heavy duty vehicle for which an income tax credit is allowed under Sections 59-7-618 or 59-10-1033.

R307-122-2. Definitions.

The following additional definitions apply to R307-122.

"Heavy duty vehicle" means heavy duty vehicle as defined in Subsection 59-7-618(1)([b]c) and 59-10-1033(1)([b]c).

"Original equipment manufacturer (OEM) vehicle" means original equipment manufacturer (OEM) as defined in Subsection 19-1-402(8).

"Qualified heavy duty vehicle" means qualified heavy duty vehicle as defined in 59-7-618(1)([d]e) and 59-10-1033(1)([d]e).

"Qualified purchase" means qualified purchase as defined in 59-7-618(1)([e]f) and 59-10-1033(1)([e]f).

"Qualified taxpayer" means qualified taxpayer as defined in 59-7-618(1)([f]g) and 59-10-1033(1)([f]g).

R307-122-3. Reservation of a Qualified Heavy Duty Vehicle Tax Credit.

(1) A qualified taxpayer shall reserve a qualified heavy duty vehicle tax credit before submitting proof of qualified purchase to obtain approval from the division for the heavy duty vehicle tax credit. A qualified taxpayer shall apply to reserve the tax credit on forms provided by the division, which will include the following:

(a) the name of the qualified taxpayer and the qualified taxpayers registered name with the United States Department of Transportation (USDOT),

(b) the last four digits of the qualified taxpayer's social security number(SSN) or employer identification number (EIN),

(c) the qualified taxpayer's address, and

(d) the qualified taxpayer's USDOT number.

(2) The tax credit shall be reserved for the qualified taxpayer for up to 180 calendar days from the division's approval of the request to reserve the credit.

(3) If the qualified taxpayer does not meet all of the requirements of R307-122-4 before 181 calendar days after the division's approval of the request to reserve the tax credit, the tax credit will no longer be reserved for the qualified taxpayer.

R307-122-4. Proof of Qualified Purchase for a Qualified Heavy Duty Vehicle.

To demonstrate that a heavy duty vehicle is eligible for the tax credit, proof of qualified purchase shall be made in accordance with 59-7-605(6)(a) or 59-10-1009(6)(a), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or

equivalent manufacturer's documentation showing that the heavy duty vehicle ~~is an OEM natural gas vehicle, or~~;

~~(i) is an OEM natural gas vehicle;~~

~~(ii) has a 100% electric drivetrain; or~~

~~(iii) has a hydrogen-electric drivetrain; or~~

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the heavy duty vehicle ~~is an OEM natural gas vehicle~~;

~~(i) is an OEM natural gas vehicle;~~

~~(ii) has a 100% electric drivetrain; or~~

~~(iii) has a hydrogen-electric drivetrain;~~

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the qualified taxpayer seeking the credit, the name of the seller of the heavy duty vehicle, the VIN, purchase date, and price of the heavy duty vehicle;

(3) a copy of the current Utah vehicle registration in the name of the qualified taxpayer seeking the credit; and

(4) the certification required under Subsection 59-7-618(2)(b) and 59-10-1033(2)(b).

KEY: air pollution, alternative fuels, tax credits, heavy duty vehicles

Date of Enactment or Last Substantive Amendment: ~~September 3, 2015~~ 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-618; 59-10-1033

Environmental Quality, Air Quality R307-230

NOx Emission Limits for Natural Gas-Fired Water Heaters

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41627

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to take credit in the Utah State Implementation Plan (SIP) for the emission reductions that will occur as a result of recent amendments to the State Construction and Fire Codes Act (Building Code).

SUMMARY OF THE RULE OR CHANGE: Rule R307-230 incorporates the NOx emission limits for natural gas-fired water heaters found in the Building Code into the Utah Air Quality rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 15A-6-102 and Section 19-2-104

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds State Construction and Fire Codes Act, published by Utah, 03/22/2017

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule does not impact the state budget because the emission standards for natural gas-fired water heaters are already required by the Utah Building Code (Section 15A-6-102).

◆ **LOCAL GOVERNMENTS:** This rule does not impact local government budgets because the emission standards for natural gas-fired water heaters are already required by the Utah Building Code (Section 15A-6-102).

◆ **SMALL BUSINESSES:** This rule does not have a fiscal impact on small businesses because the emission standards for natural gas-fired water heaters are already required by the Utah Building Code (Section 15A-6-102).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does not impact persons other than small businesses, businesses, or local government entities because the emission standards for natural gas-fired water heaters are already required by the Utah Building Code (Section 15A-6-102).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost because the Utah Building Code already requires the emission limits that are being incorporated by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a fiscal impact on businesses because the emission standards for natural gas-fired water heaters are already required by the Utah Building Code (Section 15A-6-102).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY

AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-230. NO_x Emission Limits for Natural Gas-Fired Water Heaters.

R307-230-1. Purpose.

The purpose of R307-230 is to reduce emissions of nitrogen oxides (NO_x) from natural gas-fired water heaters.

R307-230-2. Applicability.

R307-230 applies to the sale or installation of natural gas-fired water heaters on or after July 1, 2018.

R307-230-3. Emission Limits and Requirements.

(1) The State Construction and Fire Codes Act, Subsection 15A-6-102, Enacted by Chapter 236, 2017 General Session, is hereby incorporated by reference.

(2) Manufacturers shall use South Coast Air Quality Management District Method 100.1 to comply with the NO_x emission limits.

KEY: water heaters, natural gas, NO_x, air quality

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104; 19-2-107.7

Environmental Quality, Air Quality
R307-309
Nonattainment and Maintenance Areas
for PM10 and PM2.5: Fugitive
Emissions and Fugitive Dust

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41628

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to provide clarity on the meaning of the applicability section and the methods of compliance. All changes are being proposed so that the rule will be eligible for EPA approval into the Utah State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The rule is being changed to add an affirmative requirement that sources keep compliance records for a period of two years. Other changes to the rule include: 1) language that was added to Section R307-309-3 to emphasize that the rule applies to fugitive dust sources one-quarter acre or greater; 2) a clarification on the method for observing fugitive emissions that allows people to observe emissions at varying lengths of duration, not just six minutes; and 3) an explicit statement that fugitive dust plans are still required for the activities mentioned in Sections

R307-309-7 through R307-309-11. These numbered changes mainly add clarity to the rule, and they do not change the way that the Division of Air Quality has previously interpreted those sections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the only new requirement for third parties (including the state) is to keep records of compliance for two years. This will not add any costs because the sources were already required to keep records to demonstrate compliance. Previously, there was no limit on the amount of time that sources had to maintain records. However, most sources already kept the records for two years because that is the statute of limitations for the Utah Environmental Code (Section 78B-2-307.5). Therefore, there is no predicted change in the cost as a result of this rule change.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments because the only new requirement for third parties (including local governments) is to keep records of compliance for two years. This will not add any costs because the sources were already required to keep records to demonstrate compliance. Previously, there was no limit on the amount of time that sources had to maintain records. However, most sources already kept the records for two years because that is the statute of limitations for the Utah Environmental Code (Section 78B-2-307.5). Therefore, there is no predicted change in the cost as a result of this rule change.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the only new requirement for third parties is to keep records of compliance for two years. This will not add any costs because the sources were already required to keep records to demonstrate compliance. Previously, there was no limit on the amount of time that sources had to maintain records. However, most sources already kept the records for two years because that is the statute of limitations for the Utah Environmental Code (Section 78B-2-307.5). Therefore, there is no predicted change in the cost as a result of this rule change.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to people other than small business, businesses, or local governments because the only new requirement for third parties is to keep records of compliance for two years. This will not add any costs because the sources were already required to keep records to demonstrate compliance. Previously, there was no limit on the amount of time that sources had to maintain records. However, most sources already kept the records for two years because that is the statute of limitations for the Utah Environmental Code (Section 78B-2-307.5). Therefore, there is no predicted change in the cost as a result of this rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons as a result of this rule change because the sources already were required to keep records for compliance for at least two years. Now the sources are able to dispose of the records after two years. This does not add any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated cost or savings to businesses because the only new requirement for third parties is to keep records of compliance for two years. This will not add any costs because the sources were already required to keep records to demonstrate compliance. Previously, there was no limit on the amount of time that sources had to maintain records. However, most sources already kept the records for two years because that is the statute of limitations for the Utah Environmental Code (Section 78B-2-307.5). Therefore, there is no predicted change in the cost as a result of this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-309. Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust.
R307-309-1. Purpose.

This rule establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust.

R307-309-2. Definitions.

The following additional definition applies to R307-309:
 "Material" means sand, gravel, soil, minerals, and other matter that may create fugitive dust.

R307-309-3. Applicability.

(1) [~~Applicability.~~]R307-309 applies to all new or existing sources of fugitive dust one-quarter acre or greater and any

sources of fugitive emissions located in PM10 [~~and~~]or PM2.5 nonattainment [~~and~~]or maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011)[~~—except as specified in R307-309-3(2)~~]. Collectively, the PM10 and PM2.5 nonattainment and maintenance plan areas are geographically defined as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; all regions of Utah County; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) Exemptions.

(a) Agriculturally derived fugitive dust sources, including agricultural or horticultural activities specified in 19-2-114 (1)-(3) are exempt from the provisions of R307-309.

(b) Any activity subject to R307-307, Road Salting and Sanding, is exempt from R307-309[~~—7~~].

R307-309-4. Fugitive Emissions.

(1) Fugitive emissions from any source shall not exceed 15% opacity.

(2) Opacity observations of fugitive emissions from stationary sources shall be conducted in accordance with EPA Method 9.

(3) For intermittent sources and mobile sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply. The number of observations and the time period shall be determined by the length of the intermittent or mobile source operation.

R307-309-5. General Requirements for Fugitive Dust.

(1) Except as provided in R307-309-5(3), opacity caused by fugitive dust shall not exceed:

- (a) 10% at the property boundary; and
- (b) 20% on site

(2) Any person owning or operating a new or existing source of fugitive dust one-quarter acre or greater in size shall submit a fugitive dust control plan to the director in accordance with R307-309-6.

(3) Opacity in R307-309-5(1) shall not apply when the wind speed exceeds 25 miles per hour if the owner or operator has implemented, and continues to implement, the accepted fugitive dust control plan in R307-309-6 and administers [~~at least one~~]one or more of the following contingency measures:

- (a) Pre-event watering;
- (b) Hourly watering;
- (c) Additional chemical stabilization[~~—or~~]
- (d) Cease or reduce fugitive dust producing operations to the extent practicable.

[~~—(e) Other contingency measure approved by the director.~~]
 (4) Wind speed [~~may~~]shall be measured by [~~a hand-held~~]an anemometer[~~—or equivalent device~~].

(5) Opacity observations of fugitive dust from any source shall be measured at the densest point of the plume.

(a) For mobile sources, visible emissions shall be measured at a point not less than 1/2 vehicle length behind the vehicle and not less than 1/2 the height of the vehicle.

(b) Opacity observations of emissions from stationary sources shall be measured in accordance with EPA Method 9.

(c) For intermittent sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply. The number of observations and the time period shall be determined by the length of the intermittent or mobile source operation.

R307-309-6. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations, clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, moving trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads, or demolition activities including razing homes, buildings or other structures, shall submit a fugitive dust control plan on a form provided by the director or another format approved by the director.

(a) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-6 for that source.

(2) Activities regulated by R307-309 shall not commence before the fugitive dust control plan is approved by the director.

(a) Successful completion of the web-based division-sponsored fugitive dust control plan tool shall constitute plan approval.

(b) Hard copy fugitive control plan submission must be reviewed and approved by the director prior to commencing activities regulated by R307-309.

(3) Sources with an existing fugitive dust control plan who make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(4) Minimum fugitive dust control plan requirements. At a minimum, a fugitive dust control plan must include the following requirements as they apply to a source:

(a) Backfilling.

(i) Stabilize backfill material when not actively handling.

(ii) Stabilize backfill material during handling.

(iii) Stabilize soil at completion of backfilling activity.

(iv) Stabilize material while using pipe padder equipment.

(b) Blasting.

(i) Stabilize surface soils where drills, support equipment and vehicles will operate.

(ii) Stabilize soil during blast preparation activities.

(iii) Stabilize soil after blasting.

(c) Clearing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize disturbed soil immediately after clearing and grubbing activities.

(iii) Stabilize slopes at completion of activity.

(d) Clearing forms, foundations and slabs.

(i) Use water, sweeping and vacuum to clear.

(e) Crushing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize material before, during and after crushing.

(iii) Traffic mileage or speed controls.

(iv) Minimize transfer height.

(f) Cut and fill.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Pre-water soils.

(iii) Stabilize soil during and after cut activities.

(g) Demolition-implosion.

(i) Stabilize surface area where support equipment and vehicles will be operated.

(ii) Stabilize demolition debris immediately following blast and safety clearance.

(iii) Stabilize and clean surrounding area immediately following blast and safety clearance.

(h) Demolition-mechanical and manual.

(i) Stabilize surface areas where support equipment and vehicles will operate.

(ii) Stabilize demolition debris during handling.

(iii) Stabilize debris following demolition.

(iv) Stabilize surrounding area following demolition.

(i) Disturbed soil.

(i) Limit disturbance of soils where possible.

(ii) Stabilize and maintain stability of all disturbed soil throughout construction site.

(j) Hauling materials.

(i) Limit visible dust opacity from vehicular operations.

(ii) Stabilize materials during transport on site.

(iii) Clean wheels and undercarriage of haul trucks prior to leaving construction site.

(k) Paving subgrade preparation.

(i) Stabilize adjacent disturbed soils following paving activities by applying water, chemical stabilizer and/or synthetic cover.

(l) Sawing and cutting materials.

(i) Limit visible emissions using water or vacuum.

(m) Screening.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Pre-treat material prior to screening.

(iii) Stabilize material during screening.

(iv) Stabilize material and surrounding area immediately after screening.

(v) Minimize transfer height.

(n) Staging areas.

(i) Limit visible dust opacity from vehicular operations.

(ii) Stabilize staging area soils during use.

(iii) Stabilize staging area soils at project completion.

(o) Stockpiling.

(i) Stabilize stockpile materials during and after handling.

(ii) Stabilize surface soils where support equipment and vehicles will operate.

(p) Trackout prevention and cleanup.

(i) Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect.

(q) Traffic on unpaved routes and parking areas.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(r) Trenching.

- (i) Stabilize surface soils where trenching equipment, support equipment and vehicles will operate.
- (ii) Stabilize soils after trenching.
- (s) Truck loading.
- (i) Empty loader bucket slowly and keep loader bucket close to the truck to minimize the drop height while dumping.
- (ii) Stabilize surface soils where support equipment and vehicles will operate.
- (5) The fugitive dust control plan must include contact information, site address, total area of disturbance, expected start and completion dates, identification of dust suppressant and plan certification by signature of a responsible person.

R307-309-7. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, and in accordance with R307-309-6, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-8. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, and in accordance with R307-309-6, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-9. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible and in accordance with R307-309-6. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

(2) Unpaved Roads. Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-10. Mining Activities.

(1) In addition to the requirements under R307-309-1 through R307-309-6, [F]fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-309-10[~~and not by R307-309-6, 7, 8, 9, and 11.~~].

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used shall include:

- (a) Periodic watering of unpaved roads or;
- (b) Use of chemical stabilizers on unpaved roads or;
- (c) Paving of roads.
- (d) Immediate removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface.
- (e) Restricting the speed of vehicles in and around the mining operation,
- (f) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust.
- (g) Restricting the travel of vehicles on other than established roads.
- (h) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage.
- (i) Substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion.
- (j) Minimizing the area of disturbed land.
- (k) Prompt revegetation of regraded lands.
- (l) Planting of special windbreak vegetation at critical points in the permit area.
- (m) Control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director.
- (n) Restricting the areas to be blasted at any one time.
- (o) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization.
- (p) Restricting fugitive dust at spoil and coal transfer and loading points.
- (q) Control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or other techniques[~~as approved by the director, or~~ ~~other techniques~~] as determined necessary by the director and upon concurrence by EPA. [~~_____ (4) Owners or operators shall submit a fugitive dust control plan to the director on a form provided by the director or another format approved by the director.~~]
- ~~_____ (a) Activities regulated by R307-309-10 shall not commence before the fugitive dust control plan is approved by the director.~~
- ~~_____ (b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-10.~~
- ~~_____ (c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.~~
- ~~_____ (d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.]~~

R307-309-11. Tailings Piles and Ponds.

(1) In addition to the requirements under R307-309-1 through R307-309-6, [F]fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated

under the provisions of R307-309-11[~~and not by R307-309-6, 7, 8, 9, and 10.~~]

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls shall include:

- (a) Watering or;
- (b) Chemical stabilization or;
- (c) Synthetic covers or;
- (d) Vegetative covers or;
- (e) Wind breaks or;
- (f) A combination of R307-309-11(2)(a)-(e);
- (g) Minimizing the area of disturbed tailings;
- (h) Restricting the speed of vehicles in and around the

tailings operation; or

~~(h)i~~ Other ~~[equivalent methods or]~~ techniques which may be approvable by the director and upon concurrence by EPA.

~~(3) Owners or operators shall submit a fugitive dust control plan to the director.~~

~~(a) Activities regulated by R307-309-11 shall not commence before the fugitive dust control plan is approved by the director.~~

~~(b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-11.~~

~~(c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.~~

~~(d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.]~~

R307-309-12. Record Keeping.

All sources subject to R307-309-5(2) and (3) shall maintain records for two years demonstrating compliance with R307-309. These records shall be available to the director upon request.

[R307-309-13. Compliance Schedule.

~~(1) All sources within the applicable portions of Salt Lake County, Utah County and the city of Ogden shall be in compliance with R307-309 upon the effective date of this rule.~~

~~(2) All sources within the remaining areas described in R307-309-3(1) shall be in compliance with R307-309-4 through 9 and R307-309-12 within 30 days of the effective date of this rule and shall be in compliance with R307-309-10 and 11 within 90 days of the effectiveness of this rule.]~~

KEY: air pollution, fugitive dust

Date of Enactment or Last Substantive Amendment: ~~[January 1, 2013]~~ **2017**

Notice of Continuation: ~~[February 5, 2015]~~ **2017**

Authorizing, and Implemented or Interpreted Law: **19-2-101; 19-2-104; 19-2-109**

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-15** Standards for the Management of Used Oil

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41650

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016. Other proposed changes are being made to clarify text, correct citations and text, and potentially reduce transportation costs for qualifying transit systems to transport their own used oil to a permitted used oil recycler.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-15-1 reflect those corresponding revisions made by the final HWGIR to 40 CFR 279, as promulgated on 11/28/2016 (81 FR 85732), by replacing "conditionally exempt" with "very" and amending the citation to Section R315-262-14. Proposed changes to Section R315-15-10 clarify the text regarding sudden accidental and non-sudden accidental releases and correct certain citations. Proposed changes to Section R315-15-12 correct subsection numbering. The proposed change to Section R315-15-13 adds to the list of NAICS codes, 485111 Mixed Mode Transit Systems, to allow qualifying transit systems to transport their own used oil to a permitted used oil recycler. The proposed changes to Section R315-15-17 remove the word "liability" to be more correct. Specifically, incorporating into Rule R315-15 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising

the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt," which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. There may be a cost saving to the state budget to the extent that state funds are used to support such transportation expenses. Any cost savings will vary depending on the volume of used oil transported.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. There may be a cost saving to local government to the extent that local government funds are used to support such transportation expenses. Any cost savings will vary depending on the volume of used oil transported.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. However, this change will likely not have a financial impact on small businesses since they typically do not operate mixed mode transit systems.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate

annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. Any cost savings will vary depending on the volume of used oil transported and market conditions for used oil and related petroleum products.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. Any cost savings will vary depending on the volume of used oil transported and market conditions for used oil and related petroleum products.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100. The proposed change to allow qualifying mixed mode transit systems to transport their own used oil to a permitted used oil recycler will result in saving the cost of outsourcing such transportation. Any cost savings will vary depending on the volume of used oil transported and market conditions for used oil and related petroleum products.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-15. Standards for the Management of Used Oil.

R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-261.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-261-20 through 24.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-261-30 through 33 and 35 are subject to regulation as hazardous waste under R315-261 rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-261-20 through 24 and a mixture of used oil and hazardous waste that is listed in R315-261-30 through 33 and 35 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-261-20 through 24 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-260 through 266, 268, 270, and 273 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-261-20 through 24; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-261-20 through 24.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-261-21.

(3) ~~Conditionally exempt~~ Very small quantity generator hazardous waste. Mixtures of used oil and ~~conditionally exempt~~ very small quantity generator hazardous waste regulated under ~~R315-261-5~~ Section R315-262-14 are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-260 through 266, 268, 270, and 273 as provided in R315-261-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as

part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-18 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and

(c) The used oil is delivered to a used oil burner.

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-266-100 through 112, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-264 or R315-265.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-261.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-261.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

(2) gravity hot-draining and crushing;

(3) dismantling and gravity hot-draining; or

(4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-15-1.7(b) through (h) and R315-260.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dielectric oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing/refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

(1) cleanup and closure costs;

(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability; and

(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

(i)(A) The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Director of its ability to meet these financial requirements.

(B) The owner or operator shall present with its permit application the information the Director requires to demonstrate its general comprehensive liability coverage.

(C) The owner or operator shall use the financial mechanisms described in R315-15-12 to demonstrate its ability to meet the financial requirements of R315-15-10(a)(1) and (a)(3).

(ii) In approving the financial mechanisms used to satisfy the financial requirements, the Director will take into account existing financial mechanisms already in place by the facility if required by R315-264-140 through 151, R315-265-140 through 150, and R311-201-6. Additionally, the Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

(iii) Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Director as part of the permit application and approval process and shall be maintained until released by Director.

(iv) Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Director.

(b)(1) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from ~~[sudden and non-sudden accidental releases]~~ sudden accidental releases, non-sudden accidental releases, or both, of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Director as provided for in R315-15-10.

(2) Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(i) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs; and

(ii) For operations in whole or part that do not qualify under ~~[R315-15-10(b)(1)]~~ Subsection R315-15-10(b)(2)(i), coverage shall be in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, and \$3 million per occurrence for non-sudden releases, with an annual aggregate coverage of \$6 million, exclusive of legal defense costs;

(iii) For operations covered under Subsection R315-15-10(b)(2)(ii), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of \$4 million per occurrence, with an annual aggregate coverage of \$8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Director as provided for R315-15-10. The minimum amount of the coverage for used oil transporters shall be \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Director.

(d) An owner or operator responsible for cleanup and closure under R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Director through the use of an acceptable financial assurance mechanism indicated under R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under R315-15-10(a) and (b) unless these requirements are waived by the Director. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Director shall waive an owner or operator from its existing financial responsibility mechanism as described in R315-15-10 when:

(1) The Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to R315-15-11; or

(3) The Director determines that financial responsibility is no longer applicable under R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-10.

R315-15-12. Financial Assurance.**12.1 DEFINITIONS**

For the purposes of R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Director in accordance with R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with R315-15-13 from the Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under R315-15-10 sufficient to assure cleanup and closure of the facility in conformance with R315-15-11.1 with one or more of the financial assurance mechanisms of R315-15-12.3 prior to receiving a permit from the Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Director, above the storage or processing capacity identified in the permit application approved by the Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Director as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the Director, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Director that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to the Director on or before the anniversary date of the trust.

(v) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director in writing prior to the trustee granting reimbursement.

(viii) The Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Director as identified in R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective before the initial receipt of used oil.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Director as identified in R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Director a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Director found in R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective before the initial receipt of used oil

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the language incorporated by reference in R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

~~[(v)]~~(v) The letter of credit shall follow the wording provided by the Director as identified in R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective before the initial receipt of used oil.

~~[(A)]~~(A) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Director.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Director, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Director.

(A) The Insurer shall establish a standby trust agreement for only the benefit of the Director when the Director notifies the Insurer that the Director is making a claim, as provided for in R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within 30 days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Director incorporated by reference in R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(vi) An owner or operator, or other person authorized by the Director, may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in R315-15-12.

(xii) Whenever requested by the Director, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xv) All policy provisions related to R315-15 shall be construed in accordance with the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Director at the time the Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of R315-15-12.3(b)(1), except for item R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(3) The owner or operator shall demonstrate compliance with R315-15-10(b) or (c) by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.10.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Director may adjust the level of financial responsibility required under R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from non-

sudden release of used oil resulting from the used oil operations or facilities, the Director may require that an owner or operator of the used oil facility or operation comply with R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Director when requested in writing, any information the Director requests to determine whether cause exists for an adjustment to the financial responsibility under R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in R315-15-10(d) has changed, it may submit a written request to the Director to modify its permit to reflect the changed responsibility.

(f) The Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Director to modify its permit to change its financial assurance mechanism or mechanisms as described in R315-15-12.

(h) The Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Director by certified mail within ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

- (i) bankruptcy of the trustee or issuing institution; or
- (ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or
- (iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

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R315-15-13. Registration and Permitting of Used Oil Handlers.

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13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A

person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

- (1) The name and address of the operator;
- (2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;
- (3) Maps of all transfer facilities, if applicable;
- (4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

- (7) The methods of disposing of any waste by-products;
- (8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

- (i) Personal safety equipment;
- (ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;
- (iii) A minimum number and qualification of workers involved in the loading or off-loading operations;
- (iv) Braking and blocking of rail car wheels;
- (v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transportes used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in 2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), 485111 (Mixed Mode Transit Systems), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transportes and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted used oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

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R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Waste Management and Radiation Control located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed in duplicate original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.14.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form approved by the Director.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

17.5 UTAH USED OIL POLLUTION [~~LIABILITY~~] INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution [~~Liability~~] Insurance Endorsement for Cleanup and Closure Form approved by the Director.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form approved by the Director.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form approved by the Director.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form approved by the Director.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

KEY: hazardous waste, used oil

Date of Enactment or Last Substantive Amendment: [February 13], 2017

Notice of Continuation: March 10, 2016

Authorizing, and Implemented or Interpreted Law: 19-6-704

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-260
Hazardous Waste Management
System**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41651

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-260 reflect those corresponding revisions made by the final HWGIR to 40 CFR 260, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-260 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCE:

◆ Adds 81 FR 85806, published by Office of Federal Register, 11/28/2016

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-260. Hazardous Waste Management System.
R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

(3) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(4) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(5) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under

Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(6) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(7) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(8) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(9) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(10) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

~~[(10)](11)~~ "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

~~[(11)](12)~~ "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

~~[(12)](13)~~ "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

(14) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through 216 is also subject to Section R315-262-211 when accumulating unwanted material or hazardous waste, or both.

~~[(13)](15)~~ "Certification" means a statement of professional opinion based upon knowledge and belief.

~~[(14)](16)~~ "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

~~[(15)](17)~~ "Component" means either the tank or ancillary equipment of a tank system.

~~[(16)](18)~~ "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

~~[(17)](19)~~ "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

~~[(18)](20)~~ "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

~~[(19)](21)~~ "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

~~[(20)](22)~~ "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

~~[(21)](23)~~ "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~[(22)](24)~~ "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

~~[(23)](25)~~ "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

~~[(24)](26)~~ "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

~~[(25)](27)~~ "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

~~[(26)](28)~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

~~[(27)](29)~~ "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~[(28)](30)~~ "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

~~[(29)](31)~~ "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

~~[(30)](32)~~ "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~[(31)](33)~~ "Division" means the Division of Waste Management and Radiation Control.

~~[(32)](34)~~ "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

~~[(33)](35)~~ "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

~~[(34)](36)~~ "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

~~[(35)](37)~~ "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

~~[(36)](38)~~ "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

~~[(37)](39)~~ "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

~~[(38)](40)~~ "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

~~[(39)](41)~~ "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21.

~~[(40)](42)~~ "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

~~[(41)](43)~~ "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

~~[(42)](44)~~ "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

~~[(43)](45)~~ "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating,

storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-1-10(43)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

~~[(44)](46)~~ "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

~~[(45)](47)~~ "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

~~[(46)](48)~~ "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

~~[(47)](49)~~ "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~[(48)](50)~~ "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

~~[(49)](51)~~ "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

~~[(50)](52)~~ "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

~~[(51)](53)~~ "Ground water" means water below the land surface in a zone of saturation.

~~[(52)](54)~~ "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and
 (ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

~~[(53)](55)~~ "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

~~[(54)](56)~~ "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)~~[(54)](58)~~, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of

Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

~~[(55)](57)~~ "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

~~[(56)](58)~~ "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

~~[(57)](59)~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

~~[(58)](60)~~ "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

~~[(59)](61)~~ "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
 (ii) Meets the definition of infrared incinerator or plasma arc incinerator.

~~[(60)](62)~~ "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~[(61)](63)~~ "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

~~[(62)](64)~~ "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;
 (ii) Lime kilns;
 (iii) Aggregate kilns;
 (iv) Phosphate kilns;
 (v) Coke ovens;
 (vi) Blast furnaces;
 (vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;
 (viii) Titanium dioxide chloride process oxidation reactors;
 (ix) Methane reforming furnaces;

(x) Pulping liquor recovery furnaces;

(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

~~(63)~~(65) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~(64)~~(66) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

~~(65)~~(67) "Injection well" means a well into which fluids are injected. See also "underground injection".

~~(66)~~(68) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

~~(67)~~(69) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

~~(68)~~(70) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

~~(69)~~(71) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

~~(70)~~(72) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste

electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

~~(71)~~(73) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

~~(72)~~(74) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

~~(73)~~(75) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~(74)~~(76) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(77) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~(75)~~(78) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

~~(76)~~(79) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

~~(77)~~(80) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

~~(78)~~(81) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

~~(79)~~(82) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the

electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

~~[(80)]~~(83) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

~~[(81)]~~(84) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

~~[(82)]~~(85) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

~~[(83)]~~(86) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

~~[(84)]~~(87) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

~~[(85)]~~(88) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

~~[(86)]~~(89) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

~~[(87)]~~(90) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

~~[(88)]~~(91) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container

holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

~~[(92)]~~(92) "Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

~~[(89)]~~(93) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

~~[(90)]~~(94) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~[(91)]~~(95) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

~~[(92)]~~(96) "Operator" means the person responsible for the overall operation of a facility.

~~[(93)]~~(97) "Owner" means the person who owns a facility or part of a facility.

~~[(94)]~~(98) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

~~[(95)]~~(99) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-5-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

~~[(96)]~~(100) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

~~[(97)]~~(101) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

~~(98)~~(102) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

~~(99)~~(103) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

~~(100)~~(104) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

~~(101)~~(105) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) Is a new animal drug under FFDCA section 201(w), or

(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Subsection R315-260-10~~(101)~~(c)(105)(i) or (ii).

~~(102)~~(106) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

~~(103)~~(107) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~(104)~~(108) "POHC's" means principle organic hazardous constituents.

~~(105)~~(109) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

~~(106)~~(110) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

~~(107)~~(111) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~(108)~~(112) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

~~(109)~~(113) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

~~(110)~~(114) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

~~(111)~~(115) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

~~(112)~~(116) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

~~(113)~~(117)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

~~(114)~~(118) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

~~(115)~~(119) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~(116)~~(120) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~(117)~~(121) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~(118)~~(122) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~[(119)](123)~~ "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

~~[(120)](124)~~ "Small Quantity Generator" ~~[means a generator who generates less than 1000 kg of hazardous waste in a calendar month]~~ is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(121)](125)~~ "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units ~~[include]~~ include any area at a facility at which solid wastes have been routinely and systematically released.

~~[(122)](126)~~ "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

~~[(123)](127)~~ "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

~~[(124)](128)~~ "Sorb" means to either adsorb or absorb, or both.

~~[(125)](129)~~ A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

~~[(126)](130)~~ "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

~~[(127)](131)~~ "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

~~[(128)](132)~~ "State" means the state of Utah.

~~[(129)](133)~~ "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(130)](134)~~ "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

~~[(131)](135)~~ "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

~~[(132)](136)~~ "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

~~[(133)](137)~~ "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

~~[(134)](138)~~ "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

~~[(135)](139)~~ "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

~~[(136)](140)~~ "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

~~[(137)](141)~~ "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

~~[(138)](142)~~ "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

~~[(139)](143)~~ "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each

cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

~~[(140)]~~~~(144)~~ "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

~~[(141)]~~~~(145)~~ "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~[(142)]~~~~(146)~~(i) "Treatability ~~[Study]~~study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,

(B) what pretreatment, if any, is required,

(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

~~[(143)]~~~~(147)~~ "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~[(144)]~~~~(148)~~ "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(145)]~~~~(149)~~ "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

~~[(146)]~~~~(150)~~ "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

~~[(147)]~~~~(151)~~ "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

~~[(148)]~~~~(152)~~ "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

~~[(149)]~~~~(153)~~ "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(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;

(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).

~~[(150)]~~~~(154)~~ Universal ~~[Waste Handler]~~waste handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

~~[(151)]~~~~(155)~~ "Universal ~~[Waste Transporter]~~waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

~~[(152)]~~~~(156)~~ "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~[(153)]~~~~(157)~~ "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~[(154)]~~~~(158)~~ Used oil is defined in Subsection 19-6-703(19).

~~[(155)]~~~~(159)~~ "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(160) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~(156)~~(161) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~(157)~~(162) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

~~(158)~~(163) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

~~(159)~~(164) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~(160)~~(165) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

~~(161)~~(166) "Well injection": See "underground injection"

~~(162)~~(167) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~(163)~~(168) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

R315-260-11. References.

(a) For purposes of Rules R315-260 through 266, 268, 270, and 273, Rule R315-15 and Rule R315-101, the references of 40 CFR 260.11, 2015 ed, as amended by 81 FR 85806, November 28, 2016, [is]are adopted and incorporated by reference.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: ~~June 10, 2016~~2017

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106[; 63G-4-201 through 63G-4-205; 63G-4-503]

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-261** General Requirements – Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41652

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-261 reflect those corresponding revisions made by the final HWGIR to 40 CFR 261, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-261 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in

less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ LOCAL GOVERNMENTS: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ SMALL BUSINESSES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000 annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000 annually. The total

number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-261. General Requirements - Identification and Listing of Hazardous Waste.

R315-261-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under Rules R315-262 through 265, 268, 270, and 124 and which are subject to the notification requirements of these rules.

(1) Sections R315-261-1 through 9 define the terms "solid waste" and "hazardous waste", identify those wastes which are excluded from regulation under Rules R315-262 through R315-266, R315-268 and R315-270 and [~~establishes~~establish] special management requirements for hazardous waste produced by [~~conditionally exempt~~very] small quantity generators and hazardous waste which is recycled.

(2) Sections R315-261-10 and 11 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Sections R315-261-20 through 24 identify characteristics of hazardous waste.

(4) Sections R315-261-30 through 35 list particular hazardous wastes.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Title 19 Chapter 6. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) Rule R315-261 identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in Rule R315-261, or is not a hazardous waste identified or listed in Rule R315-261, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Director has reason to believe that the material may be a solid waste within the meaning of Subsection 19-6-102(13) and a hazardous waste within the meaning of Subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

(c) For the purposes of Sections R315-261-2 and 261-6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in Section R315-260-10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of Subsections R315-261-4(a)(23), and (24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in Subsection R315-266-100(d)(1) through (3), and if the residuals meet the requirements specified in Section R315-266-112.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient, including use as an intermediate, in an industrial process to make a product, for example, distillation bottoms from one process used as feedstock in another process. However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials; or

(ii) Employed in a particular function or application as an effective substitute for a commercial product, for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment.

(6) "Scrap metal" is bits and pieces of metal[;] parts; for example bars, turnings, rods, sheets, or wire[;]; or metal pieces that may be combined together with bolts or soldering[;]; for example radiators, scrap automobiles, or railroad box cars[;], which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that

the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, i.e., sorted, and, fines, drosses and related materials which have been agglomerated. Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled Subsection R315-261-4(a)(14).

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

R315-261-4. Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid ~~[-unless] provided~~ it is not accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through ~~[R315-265-445]~~ 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to

comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

.....

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C._1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. [-]1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. [-]Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. [-]1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. [-]1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. [-]Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. [-]Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. [-]60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have

transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

~~[R315-261-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.~~

~~(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.~~

~~(b) Except for those wastes identified in Subsections R315-261-5(e), (f), (g), and (j), a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Rules R315-262 through 268, 270 and 124, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of Subsections R315-261-5(f), (g), and (j):~~

~~(c) When making the quantity determinations of Rules R315-261 and 262, the generator shall include all hazardous waste that it generates, except hazardous waste that:~~

~~(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), R315-261-6(a)(3), R315-261-7(a)(1), or R315-261-8; or~~

~~(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10; or~~

~~(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(e)(2); or~~

~~(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and Rule R315-15; or~~

~~(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80; or~~

~~(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;~~

~~(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through 35 or exhibiting one or more characteristics in Sections R315-261-20 through 24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200.~~

~~(d) In determining the quantity of hazardous waste generated, a generator need not include:~~

~~(1) Hazardous waste when it is removed from on-site storage; or~~

~~(2) Hazardous waste produced by on-site treatment, including reclamation, of his hazardous waste, so long as the hazardous waste that is treated was counted once; or~~

~~(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.~~

~~(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Rules R315-262 through 268, 270 and 124, and the notification requirements of section 3010 of RCRA:~~

~~(1) A total of one kilogram of acute hazardous wastes listed in Section R315-261-31 or Subsection R315-261-33(e).~~

~~(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in Section R315-261-31 or Subsection R315-261-33(e).~~

~~Note to Subsection R315-261-33(e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.~~

~~(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in Subsections R315-261-5(e)(1) or (2) to be excluded from full regulation under Section R315-261-5, the generator shall comply with the following requirements:~~

~~(1) Section R315-262-11;~~

~~(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in Subsections R315-261-5(e)(1) or (2), all of those accumulated wastes are subject to regulation under Rules R315-262 through 266, 268, 270 and 124, and the applicable notification requirements of section 3010 of RCRA. The time period of Subsection R315-262-34(a), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;~~

~~(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:~~

~~(i) Permitted under Rule R315-270;~~
~~(ii) In interim status under Rules R315-270 and 265;~~
~~(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271;~~

~~(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through 320;~~

~~(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 through 257.30; or~~

~~(vi) A facility which:~~

~~(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or~~

~~(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or~~

~~(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273.~~

~~(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under Section R316-261-5, the generator shall comply with the following requirements:~~

~~(1) Section R315-262-11;~~

~~(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Rule R315-262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Rules R315-263 through 266, 268, 270 and 124, and the applicable notification requirements of section 3010 of RCRA. The time period of Subsection R315-262-34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;~~

~~(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:~~

~~(i) Permitted under Rule R315-270;~~

~~(ii) In interim status under Rules R315-265 and 270;~~

~~(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271;~~

~~(iv) Permitted, licensed, or registered to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through 320;~~

~~(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 through 257.30; or~~

~~(vi) A facility which:~~

~~(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or~~

~~(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or~~

~~(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273.~~

~~(h) Hazardous waste subject to the reduced requirements of Section R315-261-5 may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in Section R315-261-5, unless the mixture meets any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24.~~

~~(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of Section R315-261-5, the mixture is subject to full regulation.~~

~~(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.]~~

R315-261-6. Requirements for Recyclable Materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subsections R315-261-6(b) and (c), except for the materials listed in Subsections R315-261-6(a)(2) and (a)(3). Hazardous wastes that are recycled shall be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of Section R315-261-6 but are regulated under Sections R315-266-20 through 23, Section R315-266-70, Section R315-266-80, Sections R315-266-100 through 112, Sections R315-266-200 through 206, and Sections R315-266-210, 220, 225, 230, 235, 240, 245, 250, 255, 260, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, and 360 and all applicable provisions in Rules R315-268, 270 and 124.

(i) Recyclable materials used in a manner constituting disposal, Sections R315-266-20 through 23;

(ii) Hazardous wastes burned, as defined in Subsection R315-266-100(a), in boilers and industrial furnaces that are not regulated under Sections R315-264-340 through 345, 347 and 351; Sections R315-370, 373, 375, 377, and 381 through 383; and Section R315-266-100 through 112;

(iii) Recyclable materials from which precious metals are reclaimed, Section R315-266-70;

(iv) Spent lead-acid batteries that are being reclaimed, Section R315-266-80.

(3) The following recyclable materials are not subject to regulation under Rules R315-262 through 268, 270 and 124, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in Section R315-262-58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b), and Section R315-262-57, export such materials

only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Sections R315-262-50 through 58, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under Subsection R315-261-4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices, this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Subsection R315-261-4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Subsection R315-15-1.2(c) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Subsection R315-15-1.2(c); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Subsection R315-15-1.2(c).

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rules R315-260 through 268, but is regulated under Rule R315-15. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Subsection R315-262-58(a)(1), for purpose of recovery is subject to the requirements of Sections R315-262-80 through 87 and 89, if it is subject to either the manifesting requirements of Rule R315-262, to the universal waste management standards of Rule R315-273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Rules R315-262 and 263 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a).

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Rules R315-264 and 265, and under Rules R315-266, 268, 270 and 124 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a). The recycling process itself is exempt from regulation except as provided in Subsection R315-261-6(d).

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in R315-261-6(a):

(i) Notification requirements under section 3010 of RCRA;

(ii) 40 CFR 265.71 and 72, which are adopted by reference; dealing with the use of the manifest and manifest discrepancies[-];

(iii) Subsection R315-261-6(d)[-]; and

(iv) Section R315-265-75, addressing biennial reporting requirements.

(d) Owners or operators of facilities subject to permitting requirements under Section 19-6-108 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of Sections R315-264-1030 through 1036; and Sections R315-264-1050 through 1065; 40 CFR 265.1030 through 1035, which are adopted and incorporated by reference; or 40 CFR 265.1050 through 1064, ~~which are adopted and incorporated by reference~~.

R315-261-33. Lists of Hazardous Wastes - Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-261-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of, a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in Subsections R315-261-33(e) or (f).

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsection R315-261-33(e) or (f).

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection R315-261-33(e) or (f), unless the container is empty as defined in Subsection R315-261-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the

container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection R315-261-33(e) or (f), or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsection R315-261-33(e) or (f). The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in Subsection R315-261-33(e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in Subsection R315-261-33(e) or (f), such waste shall be listed in either Sections R315-261-31 or 32 or shall be identified as a hazardous waste by the characteristics set forth in Sections R315-261-20 through 24.

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Subsections R315-261-33(a) through (d), are identified as acute hazardous wastes (H)[~~and are subject to the small quantity exclusion defined in Subsection R315-261-5(e)~~].

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(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Subsections R315-261-33(a) through (d), are identified as toxic wastes (T), unless otherwise designated[~~and are subject to the small quantity generator exclusion defined in Subsection R315-261-5(a) and (g)~~].

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R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous secondary material handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are

generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

- (i) Name, address, and telephone number of the hazardous secondary material generator;
- (ii) Name, address, and telephone number of the facility;
- (iii) Date, time, and type of incident, e.g., fire, explosion;
- (iv) Name and quantity of material(s) involved;
- (v) The extent of injuries, if any;
- (vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [~~August 15, 2016~~2017]

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-262
Hazardous Waste Generator
Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41653

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-262 reflect those corresponding revisions made by the final HWGIR to 40 CFR 262, as promulgated on 11/28/2016 (81 FR 85732). Proposed changes to Section R315-262-217 replaces the existing incorporation by reference of the

appendix to 40 CFR 262 with the actual text regarding the Uniform Hazardous Waste Manifest and related instructions. While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-262 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September

2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000 annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000 annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
 ♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-262. Hazardous Waste Generator Requirements.

R315-262-1. General -- Terms Used in this Part.

(a) As used in Rule R315-262:
 (1) "Condition for exemption" means any requirement in Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, R315-262-70, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233 that states an event, action, or standard that shall occur or be met in order to obtain an

exemption from any applicable requirement in Rule R315-124, R315-264 through R315-268, and R315-270, or from any requirement for notification under section 3010 of RCRA.

(2) "Independent requirement" means a requirement of Rule R315-262 that states an event, action, or standard that shall occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233.

R315-262-10. General -- Purpose, Scope, and Applicability.

(a) [Rule R315-262 establish standards for generators of hazardous waste]The regulations in Rule R315-262 establish standards for generators of hazardous waste as defined by Section R315-260-10.

(1) A person who generates a hazardous waste as defined by Rule R315-261 is subject to all the applicable independent requirements in the sections listed below:

(i) Independent requirements of a very small quantity generator.

(A) Subsections R315-262-11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section R315-262-13 Generator category determination.

(ii) Independent requirements of a small quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Section R315-262-40 Recordkeeping;

(G) Section R315-262-44 Recordkeeping for small quantity generators; and

(H) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

~~(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;~~

~~(F) Sections R315-262-40 through R315-262-44--Recordkeeping and reporting applicable to small and large quantity generators, except Section R315-262-44; and~~

~~(G) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.~~

~~(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Rule R315-124, R315-264 through R315-266, R315-270 and section 3010 of RCRA, unless it is one of the following:~~

~~(i) A very small quantity generator that meets the conditions for exemption in Section R315-262-14;~~

~~(ii) A small quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-16; or~~

~~(iii) A large quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-17.~~

~~(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in Section R315-260-10, or not otherwise authorized to receive the generator's hazardous waste.~~

~~(b) [Subsections R315-261-5(e) and (d) shall be used to determine the applicability of provisions of Rule R315-262 that are dependent on calculations of the quantity of hazardous waste generated per month]Determining generator category. A generator shall use Section R315-262-13 to determine which provisions of Rule R315-262 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.~~

~~(c) [A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following Subsections of Rule R315-262 with respect to that waste: Subsection R315-262-11 for determining whether or not he has a hazardous waste, Subsection R315-262-12 for obtaining an EPA identification number, Subsection R315-262-34 for accumulation of hazardous waste, Subsection R315-262-40(e) and (d) for recordkeeping, Subsection R315-262-43 for additional reporting, and if applicable, Subsection R315-262-70 for farmers.]-Reserved.~~

~~(d) Any person who exports or imports hazardous wastes [that are considered hazardous under U.S. national procedures to or from the countries listed in Subsection R315-262-58(a)(1) for recovery]-shall comply with Section R315-262-18 and Sections R315-262-80 through R315-262-89.[—A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements at Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.]~~

~~(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.~~

~~(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards~~

in Rule R315-262 or Rules R315- 270, 264, 265, or 268 with respect to such pesticides.

~~[(g) A person who generates a hazardous waste as defined Rule R315-261 is subject to the compliance requirements and penalties prescribed in The Utah Solid and Hazardous Waste Act if he does not comply with the requirements of Rule R315-262.](1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.~~

~~(2) A generator's noncompliance with a condition for exemption in Rule R315-262 is not subject to penalty or injunctive relief under Sections 19-6-112 and 19-6-113 as a violation of a Rule R315-262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Rules R315-124, R315-264 through R315-266, and R315-270, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.~~

~~(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.~~

~~Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste 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.~~

~~Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.~~

~~(i) Reserved.~~

~~(j) Reserved.~~

~~(k) Reserved.~~

~~(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through R315-262-216 are not subject to, [(f)for purposes of Subsection R315-262-10(l), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200]-]:~~

~~(1) The independent requirements of Section R315-262-11 or the regulations in [Subsection R315-262-34(e);]Section R315-262-15 for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through R315-262-216, and~~

~~(2) The conditions of [Subsection R315-261-5(b)]Section R315-262-14, for [conditionally exempt]very small quantity generators, except as provided in Sections R315-262-200 through R315-262-216.~~

~~(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).~~

~~[Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste 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.~~

~~_____]~~ Note[2]: A generator who treats, stores, or disposes of hazardous waste on-site [must]shall comply with the applicable standards and permit requirements set forth in Rules R315-264, R315-265, R315-266, R315-268, and R315-270.

R315-262-11. General -- Hazardous Waste Determination and Recordkeeping.

~~A person who generates a solid waste, as defined in Section R315-261-2, shall [determine if that waste is a hazardous waste using the following method]make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable regulations. A hazardous waste determination is made using the following steps:~~

~~(a) [He should first determine if the waste is excluded from regulation under Section R315-261-4]The hazardous waste determination for each solid waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous classification of the waste may change.~~

~~(b) [He shall then determine if the waste is listed as a hazardous waste in Sections R315-261-30 through 35.~~

~~_____ Note: Even if the waste is listed, the generator still has an opportunity under Section R315-260-22 to demonstrate to the Director that the waste from his particular facility or operation is not a hazardous waste.]A person shall determine whether the solid waste is excluded from regulation under Section R315-261-4.~~

~~(c) [For purposes of compliance with Rule R315-268, or if the waste is not listed in Sections R315-261-30 through 35, the generator shall then determine whether the waste is identified in Sections R315-261-20 through 24 by either:~~

~~_____ (1) Testing the waste according to the methods set forth in Sections R315-261-20 through 24, or according to an equivalent method approved by the Board under Section R315-260-21; or~~

~~_____ (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.]If the waste is not excluded under Section R315-261-4, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Sections R315-261-30 through R315-261-35. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under Sections R315-260-20 and R315-260-22 to demonstrate to the Director that the waste from this particular site or operation is not a hazardous waste.~~

~~(d) [If the waste is determined to be hazardous, the generator shall refer to Rules R315-261, 264, 265, 266, 268, and 273 for possible exclusions or restrictions pertaining to management of the specific waste.]The person then shall also determine whether the waste exhibits one or more hazardous characteristics as identified in Sections R315-261-20 through R315-261-24 by following the procedures in Subsections R315-262-11(d)(1) or (2), or a combination of both.~~

(1) The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge, for example, information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Sections R315-261-20 through R315-261-24, or an equivalent test method approved by the Director under Section R315-260-21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(2) When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the applicable methods set forth in Sections R315-261-20 through R315-261-24 or according to an equivalent method approved by the Director under Section R315-260-21 and in accordance with the following:

(i) Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(ii) Where a test method is specified in Sections R315-261-20 through R315-261-24, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator shall refer to Rules R315-261, R315-264, R315-265, R315-266, R315-268, and R315-273 for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) Recordkeeping for small and large quantity generators. A small or large quantity generator shall maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by Section R315-261-3. Records shall be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and support the generator's determination, as described at Subsections R315-262-11(c) and (d). The records shall include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at Subsection R315-262-11(d)(1). The periods of record retention referred to in Subsection R315-262-11(2)(f) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers, EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35. Prior to shipping the waste off site, the generator also shall mark its containers with all applicable EPA hazardous waste numbers, EPA hazardous waste codes, according to Section R315-262-32.

[R315-262-12. EPA Identification Numbers.

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Director using EPA form 8700-12. Upon receiving the request the Director shall assign an EPA identification number to the generator.

(c) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.]

R315-262-13. General -- Generator Category Determination.

A generator shall determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in Section R315-260-10.

(a) Generators of either acute hazardous waste or non-acute hazardous waste. A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d); and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 below.

(b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d);

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 below; and

(4) Comparing the resulting generator categories from Subsection R315-262-13(b)(3) and applying the more stringent

generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 to Section R315-262-13
Generator Categories Based on Quantity of Waste Generated in a Calendar Month

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a hazardous waste cleanup of acute hazardous waste generated in a calendar month	Generator category
>1kg	Any amount	Any amount	Large quantity generator
Any amount	> or = 1,000kg	Any amount	Large quantity generator
Any amount	Any Amount	>100kg	Large quantity generator
< or = 1 kg	>100 kg and < 1,000 kg	< or = 100 kg	Small quantity Generator
< or = 1 kg	< or = 100 kg	< or = 100 kg	Very small quantity generator

(c) When making the monthly quantity-based determinations required by Rule R315-262, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), 261-6(a)(3), R315-261-7(a)(1), or Section R315-261-8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(c)(2);

(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and R315-15;

(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80;

(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;

(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200; or

(8) Is managed as part of an episodic event in compliance with the conditions of Sections R315-262-230 through R315-262-233.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under Section R315-262-13, the generator shall meet the applicable independent requirements listed in Section R315-262-10. A generator's category also determines which of the provisions of Sections R315-262-14, R315-262-15, R315-262-16 or R315-262-17 shall be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) Mixing hazardous wastes with solid wastes

(1) Very small quantity generator wastes.

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to Section R315-262-14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at Section R315-260-10, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator shall meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator shall also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under Rule R315-15.

(2) Small quantity generator and large quantity generator wastes.

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in Subsections R315-261-3(a)(2)(iv), (b)(2) and (3), and (g)(2) (i); the prohibition of dilution rule at Subsection R315-268-3(a); the land disposal restriction requirements of Section R315-268-40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at Section R315-262-11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator shall meet the conditions for exemption applicable to a large quantity generator. The small quantity generator shall also comply with the applicable independent requirements for a large quantity generator.

R315-262-14. General -- Conditions For Exemption for a Very Small Quantity Generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in Section R315-262-14, hazardous waste generated by the very small quantity generator is not subject to the requirements of Rules R315-124, 262 (except Sections R315-262-10 through R315-262-14) through R315-268, and R315-270, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in Section R315-260-10;

(2) The very small quantity generator complies with Subsections R315-262-11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in Subsection R315-262-14(a)(3); and

(ii) The conditions for exemption in Subsections R315-262-17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in Subsection R315-262-14(a)(4);

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in Subsections R315-262-16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Subsections R315-262-14(a)(3) and (4) shall either treat or dispose

of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;
 (ii) In interim status under Rules R315-265 and 270;
 (iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through R315-320;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in Rules R315-301 through R315-320 or 40 CFR 257.5 through 257.30;

(vi) A facility which:
 (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in Section R315-260-10. "Control," for the purposes of Subsection R315-262-14(a)(5)(viii), means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste" and
 (2) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Sections R315-262-230 through 233 in lieu of Sections R315-262-15, 16, and 17.

R315-262-15. General -- Satellite Accumulation Area Regulations for Small and Large Quantity Generators.

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, provided that all of the conditions for exemption in Section R315-262-15 are met. A generator may comply with the conditions for exemption in Section R315-262-15 instead of complying with the conditions for exemption in Subsection R315-262-16(b) or 17(a), except as required in Subsections R315-262-15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with Subsections R315-262-16(b) or 17(a).

(2) The generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(ii) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers shall be separated from the other materials or protected from them by any practical means.

(4) A container holding hazardous waste shall be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste; or
 (ii) When temporary venting of a container is necessary;

(A) For the proper operation of equipment, or
 (B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator shall mark or label its container with the following:

(i) The words "Hazardous Waste" and
 (ii) An indication of the hazards of the contents, examples include, but are not limited to:

(A) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(B) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172, subpart E, labeling, or subpart F, placarding;

(C) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(D) a chemical hazard label consistent with the National Fire Protection Association code 704.

(6) A generator who accumulates either acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or non-acute hazardous waste in excess of the amounts listed in Subsection R315-262-15(a) at or near any point of generation shall do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in Subsection R315-262-16(b) or 17(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either:

(A) A central accumulation area operated in accordance with the applicable regulations in Subsection R315-262-16(b) or 17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator shall continue to comply with Subsections R315-262-15(a)(1) through (5). The generator shall mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(7) All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of Subsection R315-262-16(b)(8) and emergency procedures at Subsection R315-262-16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator shall meet the Preparedness, Prevention and Emergency Procedures in Sections R315-262-250 through R315-262-265.

(b) Reserved.

R315-262-16. General -- Conditions for Exemption for a Small Quantity Generator that Accumulates Hazardous Waste.

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in Section R315-262-16 are met:

(a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in Section R315-260-10.

(b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in Subsections R315-262-16(d) and (e). The following accumulation conditions also apply:

(1) Accumulation limit. The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) Accumulation of hazardous waste in containers.

(i) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of Section R315-262-16.

(ii) Compatibility of waste with container. The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) Inspections. At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-16(b)(2)(i) for remedial action required if deterioration or leaks are detected.

(v) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) Accumulation of hazardous waste in tanks.

(i) Reserved.

(ii) A small quantity generator of hazardous waste shall comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks shall comply with 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1.

(B) Hazardous wastes or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in Subsection R315-262-16(b)(3) (iv), a small quantity generator that accumulates hazardous waste in tanks shall inspect, where present:

(A) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with Subsection R315-262-16(b)(3)(ii)(C);

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly, where applicable, the areas identified in Subsections R315-262-16(b)(3) (iii)(A) through (E). Use of the alternate inspection schedule shall be documented in the generator's operating record. This documentation shall include a description of the established workplace practices at the generator.

(v) Reserved.

(vi) A small quantity generator accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with Subsection R315-261-3(c) or (d), that any solid waste removed from its tank is not a hazardous waste, then it shall manage such waste in accordance with all applicable provisions of Rules R315-262, R315-263, R315-265, and R315-268.

(vii) A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste shall not be placed in a tank, unless:

(I) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section R315-261-21 or R315-261-23 and 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with; or

(II) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(III) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference, see Section R315-260-11.

(C) A small quantity generator shall comply with the following special conditions for incompatible wastes:

(I) Incompatible wastes, or incompatible wastes and materials, (see 40 CFR 265 appendix V for examples) shall not be placed in the same tank, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(II) Hazardous waste shall not be placed in an unwashed tank that previously held an incompatible waste or material, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(4) Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which is incorporated by reference in Section R315-265-1, except 265.445(c);

(ii) The small quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in Subsections R315-262-16(b) and Section R315-262-15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator shall comply with of 40 CFR 265.1100 through 265.1102, which is incorporated by reference in Section R315-265-1. The generator shall label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(6) Labeling and marking of containers and tanks.

(i) Containers. A small quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(7) Land disposal restrictions. A small quantity generator shall comply with all the applicable requirements under Rule R315-268.

(8) Preparedness and prevention.

(i) Maintenance and operation of facility. A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) Required equipment. All areas where hazardous waste is either generated or accumulated shall be equipped with the items in Subsections R315-262-16(b)(8)(ii)(A) through (D), unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(B) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) Testing and maintenance of equipment. All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv) Access to communications or alarm system.

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access, e.g., direct or unimpeded access, to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(B) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(v) Required aisle space. The small quantity generator shall maintain aisle space to allow the unobstructed movement of

personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi) Arrangements with local authorities.

(A) The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(I) A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(II) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(III) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(C) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-262-16(b)(9)(iv). This employee is the emergency coordinator.

(ii) The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and the state environmental incident reporting program at 801/536-0200 or after hours at 801/536-4123. The report shall include the following information:

(I) The name, address, and U.S. EPA identification number of the small quantity generator;

(II) Date, time, and type of incident, e.g., spill or fire;

(III) Quantity and type of hazardous waste involved in the incident;

(IV) Extent of injuries, if any; and

(V) Estimated quantity and disposition of recovered materials, if any.

(c) Transporting over 200 miles. A small quantity generator who shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of Subsection R315-262-16(b).

(d) Accumulation time limit extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of Rules R315-264, R315-265, R315-268, and R315-270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(e) Rejected load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the

understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Section R315-264-72 or 40 CFR 265.72, which is incorporated by reference in R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-16(a)-(d). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Sections R315-262-230 through R315-262-233 in lieu of Section R315-262-17.

R315-262-17. General -- Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste.

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all of the following conditions for exemption are met:

(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in Subsections R315-262-17(b) through (e). The following accumulation conditions also apply:

(1) Accumulation of hazardous waste in containers. If the hazardous waste is placed in containers, the large quantity generator shall comply with the following:

(i) Air emission standards. The applicable requirements of 40 CFR 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1;

(ii) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) Compatibility of waste with container. The large quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) Inspections. At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See

Subsection R315-262-17(a)(1)(ii) for remedial action required if deterioration or leaks are detected.

(vi) Special conditions for accumulation of ignitable and reactive wastes.

(A) Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval shall be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, see appendix V of 40 CFR 265 for examples, shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see appendix V of 40 CFR 265 for examples, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) Accumulation of hazardous waste in tanks. If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of 40 CFR 265.109 through 265.202, except 265.197(c) of Closure and post-closure care and 265.200, Waste analysis and trial tests, as well as the applicable requirements of 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1.

(3) Accumulation of hazardous waste on drip pads. If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which are incorporated by reference in Section R315-265-1;

(ii) The large quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in Subsection R315-262-17(a) and Section R315-262-15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1. The generator shall label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(5) Labeling and marking of containers and tanks.

(i) Containers. A large quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(6) Emergency procedures. The large quantity generator complies with the standards in Section R315-262-250 through R315-262-265, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) Personnel training.

(i)(A) Facility personnel shall successfully complete a program of classroom instruction, online training, e.g., computer-based or electronic, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described in the document required under Subsection R315-262-17(a)(7)(iv).

(B) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(C) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) Key parameters for automatic waste feed cut-off systems;

(III) Communications or alarm systems;

(IV) Response to fires or explosions;

(V) Response to ground-water contamination incidents;

and

(VI) Shutdown of operations.

(D) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to Section R315-262-17, provided that the overall facility training meets all the conditions of exemption in Section R315-262-17.

(ii) Facility personnel shall successfully complete the program required in Subsection R315-262-17(a)(7)(i) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees shall not work in unsupervised positions until they have completed the training standards of Subsection R315-262-17(a)(7)(i).

(iii) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-262-17(a)(7)(i).

(iv) The large quantity generator shall maintain the following documents and records at the facility:

(A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under Subsection R315-262-17(a)(7)(iv)(A). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Subsection R315-262-17(a)(7)(iv)(A);

(D) Records that document that the training or job experience, required under Subsections R315-262-17(a)(7)(i), (ii), and (iii), has been given to, and completed by, facility personnel.

(v) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) Closure. A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:

(i) Notification for closure of a waste accumulation unit. A large quantity generator shall perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) for container, tank, and containment building waste accumulation units or Subsection R315-262-17(a)(8)(iv) for drip pads and notify the Director following the procedures in Subsection R315-262-17(a)(8)(ii)(B) for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) Notification for closure of the facility.

(A) Notify the Director using EPA form 8700-12 no later than 30 days prior to closing the facility.

(B) Notify EPA using EPA form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv). If the facility cannot meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv), notify the Director using EPA form 8700-12 that it will close as a landfill under 40 CFR 265.310, which is incorporated by reference in Section R315-265-1, in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using EPA form 8700-12 that it will close under the standards of 40 CFR 265.445(b), which is incorporated by reference in Section R315-265-1.

(C) A large quantity generator may request additional time to clean close, but it shall notify the Director using EPA form 8700-12 within 75 days after the date provided in Subsection R315-262-17(a)(8)(ii)(A) to request an extension and provide an explanation as to why the additional time is required.

(iii) Closure performance standards for container, tank systems, and containment building waste accumulation units.

(A) At closure, the generator shall close the waste accumulation unit or facility in a manner that:

(I) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

(II) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless Subsection R315-261-3(d) applies.

(III) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste shall be managed in accordance with all applicable standards of Rules R315-262, R315-263, R315-265 and R315-268, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(IV) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in Subsection R315-262-17(a)(8)(ii)(A)(II), then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR 265.310, which is incorporated by reference in Section R315-265-1). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1.

(iv) Closure performance standards for drip pad waste accumulation units. At closure, the generator shall comply with the closure requirements of Subsections R315-262-17(a)(8)(ii) and (a)(8)(iii)(A)(I) and (III), and 40 CFR 265.445(a) and (b), which are incorporated by reference in Section R315-265-1.

(v) The closure requirements of Subsection R315-262-17(a)(8) do not apply to satellite accumulation areas.

(9) Land disposal restrictions. The large quantity generator complies with all applicable requirements under Rule R315-268.

(b) Accumulation time limit extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270 and the notification requirements of section 3010 of RCRA, unless it has been granted an extension to the 90-day period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(c) Accumulation of F006. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to Rules R315-124, R315-264 through R315-266 and R315-270, and the notification requirements of section 3010 of RCRA, provided that it complies with all of the following additional conditions for exemption:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator shall comply with the applicable conditions for exemption in Subsection R315-262-17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator shall comply with the applicable conditions for exemption of Subsection R315-262-17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1, in the facility's files prior to operation of the unit. The large quantity generator shall maintain the following records:

(I) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(II) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1, except for those referenced in Subsection R315-262-17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and shall be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words "Hazardous Waste"; and

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(v) The large quantity generator complies with the requirements in Subsection R315-262-17(a)(6) and (7).

(d) F006 transported over 200 miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days, without being subject to Rules R315-124, R315-264 through R315-266, R315-270, and the notification requirements of section 3010 of RCRA, if the large quantity generator complies with all of the conditions for exemption of Subsections R315-262-17(c)(1) through (4).

(e) F006 accumulation time extension. A large quantity generator accumulating F006 in accordance with Subsections R315-262-17(c) and (d) who accumulates F006 waste on site for more than 180 days, or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more, or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of Rules R315-124, R315-264, R315-265, and R315-270, and the notification requirements of section 3010 of RCRA, unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Director if F006 waste shall remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste shall remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.

(f) Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person, as defined in Section R315-260-10, without a storage permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270, and the notification requirements of section 3010 of RCRA, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

(1) The large quantity generator notifies the Director at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA Form 8700-12) within 30 days after a change in the name or site address for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records shall identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in Subsection R315-262-10(a)(1)(iii) and the conditions for exemption in Subsection R315-262-17(f) for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in Subsection R315-262-17(a)(5), the large quantity generator shall label the container or unit with the date accumulation started, i.e., the date the hazardous waste was received from the very small quantity generator. If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) Rejected load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Sections R315-264-72 or 40 CFR 265.72, which is incorporated by reference in Section R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-17(a) and (b). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

R315-262-18. General -- EPA Identification Numbers and Re-Notification for Small Quantity Generators and Large Quantity Generators.

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director.

(b) A generator who has not received an EPA identification number shall obtain one by applying to the Director using EPA Form 8700-12. Upon receiving the request the Director will assign an EPA identification number to the generator.

(c) A generator shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) Re-notification.

(1) A small quantity generator shall re-notify the Director starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification shall be submitted by September 1st of each year in which re-notifications are required.

(2) A large quantity generator shall re-notify the Director by March 1 of each even-numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Biennial Report required under Section R315-262-41.

(e) A recognized trader shall not arrange for import or export of hazardous waste without having received an EPA identification number from the Director.

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 8 1/2 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-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 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".

(ii) Page 2: "Designated facility to generator State, if required".

(iii) Page 3: "Designated facility to generator".

(iv) Page 4: "Designated facility's copy".

(v) Page 5: "Transporter's copy".

(vi) Page 6 (bottom copy): "Generator's initial copy".

(7) 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;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(ii) Manifest EPA Form 8700-22A.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(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.

R315-262-22. Manifest Requirements Applicable to Small and Large Quantity Generators -- Number of Copies.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

R315-262-23. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Manifest.

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with Subsection R315-262-40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within Utah solely by water, bulk shipments only, the generator shall send three copies of the manifest dated and signed in accordance with Section R315-262-23 to the owner or operator of the designated facility or the last water, bulk shipment, transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with Section R315-262-23 to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

Note: See Subsections R315-263-20(e) and (f) for special provisions for rail or water, bulk shipment, transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of Subsections R315-264-72(f) or 40 CFR 265.72(f)[-], which is adopted by reference in Section R315-265-1; the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

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 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 electronic manifest system.

(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) 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.

R315-262-25. Manifest Requirements Applicable to Small and Large Quantity Generators -- Electronic Manifest Signatures.

Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

R315-262-27. Manifest Requirements Applicable to Small and Large Quantity Generators -- Waste Minimization Certification.

A generator who initiates a shipment of hazardous waste shall certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

R315-262-30. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

R315-262-31. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

R315-262-32. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) ~~Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:~~

~~HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.~~

~~Generator's Name and Address.~~

~~Generator's EPA Identification Number.~~

~~Manifest Tracking Number.]Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:~~

~~(1) HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.~~

~~(2) Generator's Name and Address _____.~~

~~(3) Generator's EPA Identification Number _____.~~

~~(4) Manifest Tracking Number _____.~~

~~(5) EPA Hazardous Waste Number(s) _____.~~

~~(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by Subsection R315-262-32(b)(5) or paragraph (d).~~

~~(d) Lab packs that will be incinerated in compliance with Subsection R315-268-42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.~~

R315-262-33. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

[R315-262-34. Accumulation Time.

~~(a) Except as provided in Subsections R315-262-34(d), (e), and (f), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:~~

~~(1) The waste is placed:~~

~~(i) In containers and the generator complies with the applicable requirements of 40 CFR 265.170 through 178, 1030 through 1049, 1050 through 1079, and 1080 through 1091, which are adopted by reference; and/or~~

~~(ii) In tanks and the generator complies with the applicable requirements of 40 CFR 265.190 through 201, 1030-~~

~~through 1049, 1050 through 1079, and 1080 through 1091, which are adopted by reference, except 40 CFR 265.197(c) and 200; and/or~~

~~(iii) On drip pads and the generator complies with 40 CFR 265.440 through 445, which are adopted by reference, and maintains the following records at the facility:~~

~~(A) A description of procedures that shall be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and~~

~~(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or~~

~~(iv) In containment buildings and the generator complies with 40 CFR 265.1100 Through 1102, which are adopted by reference, has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is adopted by reference, in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification shall be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:~~

~~(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or~~

~~(B) Documentation that the unit is emptied at least once every 90 days. In addition, such a generator is exempt from all the requirements in 40 CFR 265.110 through 121 and 140 through 150, except for 40 CFR 265.111 and 114. 40 CFR 265 is adopted by reference in R315-265.~~

~~(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

~~(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and~~

~~(4) The generator complies with the requirements for owners or operators in 40 CFR 265.16, 30 through 37, and 50 through 56, which are adopted by reference; and with all applicable requirements under Rule R315-268.~~

~~(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Rules R315-264 and 265 and the permit requirements of Rule R315-270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the Director if hazardous wastes shall remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.~~

~~(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in containers at or near any point of generation where wastes initially accumulate~~

which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Subsections R315-262-34(a) or (d) provided he:

(i) Complies with 40 CFR 265.171, 172, and 173(a), which are adopted by reference; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in excess of the amounts listed in Subsection R315-262-34(e)(1) at or near any point of generation shall, with respect to that amount of excess waste, comply within three days with Subsection R315-262-34(a) or other applicable provisions of the rules adopted by the Waste Management and Radiation Control Board. During the three day period the generator shall continue to comply with Subsections R315-262-34(e)(1)(i) and (ii). The generator shall mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(2) The generator complies with the requirements of 40 CFR 265.170 through 178, which are adopted by reference; except for 176 and 178;

(3) The generator complies with the requirements of 40 CFR 265.201, which is adopted by reference;

(4) The generator complies with the requirements of Subsections R315-262-34(a)(2) and (a)(3), the requirements of 40 CFR 265.30 through 35 and 37, which are adopted by reference; with all applicable requirements under Rule R315-268; and

(5) The generator complies with the following requirements:

(i) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-262-34(d)(5)(iv). This employee is the emergency coordinator.

(ii) The generator shall post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator shall immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802) and the Director or the 24-hour answering service at 801-536-4123. The report shall include the following information:

(1) The name, address, and U.S. EPA Identification Number of the generator;

(2) Date, time, and type of incident (e.g., spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who shall transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of Subsection R315-262-34(d):

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days; or for more than 270 days if he shall transport his waste, or offer his waste for transportation, over a distance of 200 miles or more; is an operator of a storage facility and is subject to the requirements of Rules R315-264 and 265, and the permit requirements of Rule R315-270 unless he has been granted an extension to the 180-day, or 270-day if applicable, period. Such extension may be granted by the Director if hazardous wastes shall remain on-site for longer than 180 days, or 270 days if applicable, due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days; but not more than 180 days without a permit or without having interim status provided that:

(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

~~_____ (4) The F006 waste is managed in accordance with the following:~~

~~_____ (i) The F006 waste is placed:~~

~~_____ (A) In containers and the generator complies with the applicable requirements of 40 CFR 265.170 through 178, 1030 through 1035, 1050 through 1064, and 1080 through 1090, which are adopted by reference; and/or~~

~~_____ (B) In tanks and the generator complies with the applicable requirements of 40 CFR 265.190 through 202, 1030 through 1035, 1050 through 1064, and 1080 through 1090, which are adopted by reference; except 40 CFR 265.197(e) and 200; and/or~~

~~_____ (C) In containment buildings and the generator complies with 40 CFR 265.1100 through 1102, which are adopted by reference; and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is adopted by reference, in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:~~

~~_____ (1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or~~

~~_____ (2) Documentation that the unit is emptied at least once every 180 days.~~

~~_____ (ii) In addition, such a generator is exempt from all the requirements in 40 CFR 265.110 through 121 and 140 through 150, which are adopted by reference; except for 40 CFR 265.111 and 114.~~

~~_____ (iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

~~_____ (iv) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste;" and~~

~~_____ (v) The generator complies with the requirements for owners or operators in 40 CFR 265.16, 30 through 35, 37, and 50 through 56, which are adopted by reference; and Subsection R315-268-7(a)(5):~~

~~_____ (h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, and who shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of Subsections R315-262-34(g)(1) through (g)(4):~~

~~_____ (i) A generator accumulating F006 in accordance with Subsection R315-262-34(g) and (h) who accumulates F006 waste on-site for more than 180 days; or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more; or who accumulates more than 20,000 kilograms of F006 waste on-site if an operator of a storage facility and is subject to the requirements of~~

~~Rules R315-264 and 265, and the permit requirements of Rule R315-270 unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Director if F006 waste shall remain on-site for longer than 180 days, or 270 days if applicable, or if more than 20,000 kilograms of F006 waste shall remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.~~

~~_____ (j) Reserved.~~

~~_____ (k) Reserved.~~

~~_____ (l) Reserved.~~

~~_____ (m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Sections R315-264-72 or 40 CFR 265.72, which is adopted by reference, may accumulate the returned waste on-site in accordance with Subsections R315-262-34(a) and (b) or (d), (e) and (f), depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator shall:~~

~~_____ (1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or~~

~~_____ (2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.]~~

R315-262-35. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Liquids in Landfills Prohibition.

~~_____ The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids shall meet additional requirements as specified in Sections R315-264-314 and 40 CFR 265.314, which is incorporated by reference in Section R315-265-1.~~

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 [keep records of any test results, waste analyses, or other determinations made in accordance with Section R315-262-11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal] 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 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.

R315-262-41. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Biennial Report for Large Quantity Generators.

~~(a) [A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report shall be submitted on EPA Form 8700-13A, shall cover generator activities during the previous year, and shall include the following information:~~

~~_____ (1) The EPA identification number, name, and address of the generator;~~

~~_____ (2) The calendar year covered by the report;~~

~~_____ (3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;~~

~~_____ (4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;~~

~~_____ (5) A description, EPA hazardous waste number, from Sections R315-261-21 through 24 or 30 through 35, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information shall be listed by EPA identification number of each such off-site facility to which waste was shipped.~~

~~_____ (6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.~~

~~_____ (7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.~~

~~_____ (8) The certification signed by the generator or authorized representative.~~

~~(b) Any generator who treats, stores, or disposes of hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of Rules R315-270, 264, 265, and 266. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at Section R315-262-56.] A generator who is a large quantity generator for at least one month of an odd-numbered year, reporting year, who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year and shall cover generator activities during the previous year.~~

(b) Any generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on site shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year covering those wastes in accordance with the provisions of Rules R315-264, R315-265, R315-266, and R315-270. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to Subsection R315-262-17(f).

(c) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at Subsection R315-262-83(g) for hazardous waste exporters.

R315-262-42. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Exception Reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, shall submit an Exception Report to the Director if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Director.

Note: The submission to the Director need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest, following the procedures of Subsections R315-264-72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6)[-], which are adopted by reference; the generator shall comply with the requirements of Subsections R315-262-42(a) or (b), as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the

generator to the designated facility. For purposes of Subsection R315-262-42(a) or (b) for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator shall have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

R315-262-43. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Additional Reporting.

The Director, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Rule R315-261.

R315-262-44. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- ~~Special Requirements for Generators of Between 100 and 1000 kg/mo~~ Recordkeeping for Small Quantity Generators.

~~[A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following]~~ A small quantity generator is subject only to the following independent requirements in Sections R315-262-40 through R315-262-43:

(a) Subsection R315-262-40(a), (c), and (d), recordkeeping;

(b) Subsection R315-262-42(b), exception reporting; and

(c) Section R315-262-43, additional reporting.

R315-262-50. Exports of Hazardous Waste -- Applicability.

Sections R315-262-50 through 58 establish requirements applicable to exports of hazardous waste. Except to the extent Section R315-262-58 provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of Sections R315-262-50 through 58 and a transporter transporting hazardous waste for export shall comply with applicable requirements of Rule R315-263. Section R315-262-58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

R315-262-51. Exports of Hazardous Waste -- Definitions.

In addition to the definitions set forth at Section R315-260-10, the following definitions apply to Sections R315-262-50 through 58:

Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment. Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Sections R315-

262-20 through 25 and 27 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal, except short-term storage incidental to transportation. Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.

R315-262-52. Exports of Hazardous Waste -- General Requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of Sections R315-262-50 through 58 and Rule R315-263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with Section R315-262-53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment.

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

R315-262-53. Exports of Hazardous Waste -- Notification of Intent to Export.

(a) A primary exporter of hazardous waste shall notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number, from Sections R315-261-20 through 24, and R315-261-30 through 35, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country, e.g., land or ocean incineration, other land disposal, ocean dumping, recycling;

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

(c) Except for changes to the telephone number in Subsection R315-262-53(a)(1), changes to Subsection R315-262-53(a)(2)(v) and decreases in the quantity indicated pursuant to Subsection R315-262-53(a)(2)(iii) when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification, the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes, except for changes to Subsection R315-262-53(a)(2)(viii) and in the ports of entry to and departure from transit countries pursuant to Subsection R315-262-53(a)(2)(iv), has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-262-53(a). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-262-53(a), EPA may find the notification not complete until any such claim is resolved in accordance with Section R315-260-2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Subsection R315-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

R315-262-54. Exports of Hazardous Waste -- Special Manifest Requirements.

A primary exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter shall check the export box and enter the point of exit, city and State, from the United States.

(d) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in Subsection R315-264-72(a), between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Subsection R315-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter shall attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Subsection R315-263-20(g)(4).

R315-262-55. Exports of Hazardous Waste -- Exception Reports.

In lieu of the requirements of Section R315-262-42, a primary exporter shall file an exception report with the Office of

Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter;

(b) Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

R315-262-56. Exports of Hazardous Waste -- Annual Reports.

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 and R315-261-30 through 35, DOT hazard class, the name and US EPA ID number, where applicable, for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to Section R315-262-41, in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities,

International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

R315-262-57. Exports of Hazardous Waste -- Recordkeeping.

(a) For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in Section R315-262-57 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-58. Exports of Hazardous Waste -- International Agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-262-80 through 89. The requirements of Sections R315-262-50 through 58 and R315-262-60 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(1) For the purposes of Sections R315-262-80 through 89, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of Sections R315-262-80 through 89, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery; e.g., incineration, disposal; Mexico, for any purpose; or Canada, for any purpose, remains subject to the requirements of Sections R315-262-50 through 58 and 60, and is not subject to the requirements of Sections R315-262-80 through 89.

R315-262-80. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Applicability.

(a) The requirements of Sections R315-262-80 through 89 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in Subsection R315-262-58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) Any person; exporter, importer, or recovery facility operator; who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and non-hazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under Sections R315-262-80 through 89.

R315-262-81. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Definitions.

The following definitions apply to Sections R315-262-80 through 89.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in Subsection R315-262-58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in Subsection R315-262-58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in Subsections R315-262-58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in Section R315-262-58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

R315-262-82. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- General Conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in Subsection R315-262-80(a). The OECD Green and Amber lists are incorporated by reference in Subsection R315-262-89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a)

are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in Section R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in Subsection R315-262-58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts. Note to Subsection R315-262-82(a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of Sections R315-262-80 through 89. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, e.g., the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 89.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection

R315-262-82(a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement shall be in compliance with applicable international transport agreements; and

Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country:

(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in Subsection R315-262-58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification shall comply with the notice and consent procedures in Section R315-262-83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.

(i) The thirty day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in Subsection R315-262-58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in Subsection R315-262-82(c)(1), in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The provisions of Subsection R315-262-82(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States, as country of transit, to the country of export: The U.S. transporter shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States, as country of export: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all Amber

control procedures for notification and consent as set forth in Section R315-262-83 and for the movement document as set forth in Section R315-262-84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

(2) Within three days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis shall still be appropriately packaged and labeled.

R315-262-83. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Notification and Consent.

(a) Applicability. Consent shall be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to Sections R315-262-80 through 89. Hazardous wastes subject to the Amber control procedures are subject to the requirements of Subsection R315-262-83(b); and wastes not

identified on any list are subject to the requirements of Subsection R315-262-83(c).

(b) Amber wastes. Exports of hazardous wastes from the United States as described in Subsection R315-262-80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of Subsections R315-262-83(b)(1) or (b)(2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five days prior to commencement of each transboundary movement, the exporter shall provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Subsection R315-262-83(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned; i.e., exporting, importing, or transit; to a notification provided pursuant to Subsection R315-262-83(b)(1)(i) within thirty days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter shall provide EPA a notification that contains all the information identified in Subsection R315-262-83(d) in English, at least ten days in advance of commencing shipment to a pre-approved facility. The notification shall indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in Subsection R315-262-83(b)(1)(i). This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the

words "OECD Export Notification-Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Subsection R315-262-83(b)(1)(i) may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in Subsection R315-262-89(d), but which are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with Subsection R315-262-83(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in Subsection R315-262-89(d), and are not considered hazardous under U.S. national procedures as defined by Subsection R315-262-80(a) are subject to the Green control procedures.

(d) Notifications submitted under Section R315-262-83 shall include the information specified in Subsections R315-262-83(d)(1) through (d)(14):

(1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number, if applicable, address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name, if not the owner or operator of the recovery facility, address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in Subsection R315-262-89(d), description(s) of each waste type, estimated total quantity of each,

RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in Section R315-262-81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

Note to Subsection R315-262-83(d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Section R315-262-85.

R315-262-84. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Movement Document.

(a) All U.S. parties subject to the contract provisions of Section R315-262-85 shall ensure that a movement document meeting the conditions of Subsection R315-262-84(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subsections R315-262-84(a)(1) and (2).

(1) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the generator shall forward the movement document with the manifest to the last water, bulk shipment, transporter to handle the waste in the United States if exported by water, in accordance with the manifest routing procedures at Subsection R315-262-23(c).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest, in accordance with the routing procedures for the manifest in Subsection R315-262-23(d), to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document shall include all information required under Section R315-262-83, for notification, as well as the following Subsection R315-262-84(b)(1) through (b)(7):

(1) Date movement commenced;

(2) Name; if not exporter, address; telephone; fax numbers; and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification; license, registered name or registration number; of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty day tacit consent period; or

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

Delete sentences that are not applicable

Name:

Signature:

Date:

(7) Appropriate signatures for each custody transfer, e.g., transporter, importer, and owner or operator of the recovery facility.

(c) Exporters also shall comply with the special manifest requirements of Subsections R315-262-54(a), (b), (c), (e), and (i) and importers shall comply with the import requirements of Section R315-262-60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document; e.g., transporter, importer, and owner or operator of the recovery facility.

(e) Within three working days of the receipt of imports subject to Sections R315-262-80 through 89, the owner or operator of the U.S. recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under Section R315-262-81, the facility shall retain the original of the movement document for three years.

R315-262-200. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Definitions for Sections R315-262-200 through R315-262-216.

(a) The following definitions apply to Sections R315-262-200 through 216:

(1) ~~["Central accumulation area" means an on-site hazardous waste accumulation area subject to either Subsections~~

~~R315-262-34(a) through (b), large quantity generators, or Subsections R315-262-34(d) through (f), small quantity generators. A central accumulation area at an eligible academic entity that chooses to be subject to Section R315-262-200 through 216 shall also comply with Section R315-262-211 when accumulating unwanted material and/or hazardous waste.~~

~~(2)]~~"College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

~~(3)]~~(2) "Eligible academic entity" means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

~~(4)]~~(3) "Formal written affiliation agreement for a non-profit research institute" means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by Section R315-260-10, from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

~~(5)]~~(4) Laboratory means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research, or diagnostic purposes at a teaching hospital, and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories, or diagnostic laboratories at teaching hospitals, are also considered laboratories.

~~(6)]~~(5) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis, e.g., at the end of a semester or academic year, or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by Section R315-262-208 does not qualify as a laboratory clean-out.

~~(7)]~~(6) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

~~(8)]~~(7) "Non-profit research institute" means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

~~(9)]~~(8) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in Subsection R315-261-33(e) for reactivity.

~~(10)]~~(9) "Teaching hospital" means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

~~(11)]~~(10) "Trained professional" means a person who has completed the applicable RCRA training requirements of ~~[Section R315-265-16]~~40 CFR 265.16, which is incorporated by reference in Section R315-265-1, for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with Subsection R315-262-~~[34(d)(5)(iii)]~~17 for small quantity generators and ~~[conditionally exempt]~~very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

~~(12)]~~(11) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to Section R315-261-2, or a hazardous waste pursuant to Section R315-261-3. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material," as allowed by Subsection R315-262-206(a)(1)(i), the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under Section R315-262-200 through 216.

~~(13)]~~(12) "Working container" means a small container, i.e., two gallons or less, that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

R315-262-201. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Applicability of Sections R315-262-200 through R315-262-216.

(a) Large quantity generators and small quantity generators. Sections R315-262-200 through ~~R315-262-216~~ provides alternative requirements to the requirements in ~~[Section R315-262-11 and Subsection R315-262-34(e) for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through 216, provided that they complete the notification requirements of Section R315-262-203.~~

~~(b) Conditionally exempt small quantity generators. Sections R315-262-200 through 216 provides alternative requirements to the conditional exemption in Subsection R315-261-5(b) for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through 216, provided that they complete the notification requirements of Section R315-262-203.]~~Sections R315-262-11 and R315-262-15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

(b) Very small quantity generators. Sections R315-262-200 through R315-262-216 provide alternative requirements to the conditional exemption in Section R315-262-14 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

R315-262-202. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Sections R315-262-200 through R315-262-216 are Optional.

(a) Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through R315-262-216 with respect to its laboratories, as an alternative to complying with the requirements of Section R315-262-11 and [~~Subsection R315-262-34(e)~~]Section R315-262-15.

(b) [~~Conditionally exempt~~]Very small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through 216 with respect to [~~its~~] laboratories, as an alternative to complying with the conditional exemption of [~~Subsection R315-261-5(b)~~]Section R315-262-14.

R315-262-203. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- How an Eligible Academic Entity Indicates It Will Subject to the Requirements of Sections R315-262-200 through R315-262-216.

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form, EPA Form 8700-12, that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a [~~conditionally exempt~~]very small quantity generator and does not have an EPA Identification Number shall notify that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site, as defined by Section R315-260-10. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for [~~conditionally exempt~~]very small quantity generators, that is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216, and shall submit the Site Identification Form before it begins operating under Sections R315-262-200 through R315-262-216.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for [~~conditionally exempt~~]very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.
- (6) North American Industry Classification System (NAICS) Code(s) for the Site.
- (7) Site Mailing Address.

(8) Site Contact Person.

(9) Operator and Legal Owner of the Site.

(10) Type of Regulated Waste Activity.

(11) Certification.

(c) An eligible academic entity shall keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(d) A teaching hospital that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(e) A non-profit research institute that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

R315-262-204. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - How an Eligible Academic Entity Indicates It Will Withdraw from the Requirements of Sections R315-262-200 Through 216.

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700-12), that it is electing to no longer be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of [~~Section~~]Sections R315-262-11 and [~~Subsection R315-262-34(e)~~]R315-262-15 for small quantity generators and large quantity generators. An eligible academic entity that is a [~~conditionally exempt~~]very small quantity generator and does not have an EPA Identification Number shall notify that it is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in [~~Subsection R315-261-5(b)~~]Section R315-262-14. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for [~~conditionally exempt~~]very small quantity generators, that is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 and shall submit the Site Identification Form before it begins operating under the requirements of [~~Section~~]Sections R315-262-11 and [~~Subsection R315-262-34(e)~~]R315-262-15 for small quantity generators and large quantity generators, or [~~Subsection R315-261-5(b)~~]Section R315-262-14 for [~~conditionally exempt~~]very small quantity generators.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for [~~conditionally exempt~~]very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.

(6) North American Industry Classification System (NAICS) Code(s) for the Site.

(7) Site Mailing Address.

(8) Site Contact Person.

(9) Operator and Legal Owner of the Site.

(10) Type of Regulated Waste Activity.

(11) Certification.

(c) An eligible academic entity shall keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

R315-262-206. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Labeling and Management Standards for Containers of Unwanted Material in the Laboratory.

An eligible academic entity shall manage containers of unwanted material while in the laboratory in accordance with the requirements in Section R315-262-206.

(a) Labeling: Label unwanted material as follows:

(1) The following information shall be affixed or attached to the container:

(i) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(A) The name of the chemical(s),

(B) The type or class of chemical, such as organic solvents or halogenated organic solvents.

(2) The following information may be affixed or attached to the container, but shall at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and

(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to Section R315-262-11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

(B) Whether the unwanted material has been used or is unused,

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of Containers in the Laboratory. An eligible academic entity shall properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air,

adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management shall include the following:

(1) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and

(2) Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and

(3) Containers shall be kept closed at all times, except:

(i) When adding, removing or bulking unwanted material, or

(ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container shall either be closed or the contents emptied into a separate container that is then closed, or

(iii) When venting of a container is necessary[-];

(A) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs[-]; or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

R315-262-207. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Training.

An eligible academic entity shall provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students shall be commensurate with their duties so they understand the requirements in Sections R315-262-200 through 216 and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

(1) Instruction by the professor or laboratory manager before or during an experiment; or

(2) Formal classroom training; or

(3) Electronic/written training; or

(4) On-the-job training; or

(5) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator shall maintain documentation for the durations specified in 40 CFR 265.16(e), which is incorporated by reference in R315-265-1, demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(1) Sign-in/attendance sheet(s) for training session(s); or

(2) Syllabus for training session; or

(3) Certificate of training completion; or

(4) Test results.

(d) A trained professional shall:

(1) Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and

(2) Make the hazardous waste determination, pursuant to ~~[Section]Subsections~~ R315-262-11(a) through (d), for unwanted material.

R315-262-208. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Removing Containers of Unwanted Material from the Laboratory.

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity shall either:

(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed ~~[6]12~~ months; or

(2) Remove containers of unwanted material from each laboratory within ~~[6]12~~ months of each container's accumulation start date.

(b) The eligible academic entity shall specify in Part I of its Laboratory Management Plan whether it will comply with Subsection R315-262-208(a)(1) or (a)(2) for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity shall specify in Part II of its Laboratory Management Plan how it will comply with Subsection R315-262-208(a)(1) or (a)(2) and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(1) If a laboratory accumulates a total volume of unwanted material, including reactive acutely hazardous unwanted material, in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity shall ensure that all containers of unwanted material in the laboratory, including reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 55 gallons is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

~~(2) [If a laboratory accumulates more than 1 quart of reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity shall ensure that all containers of reactive acutely hazardous unwanted material.]~~
(2) [If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity shall ensure that all containers of reactive acutely hazardous unwanted material:]

~~(i) [Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 1 quart is exceeded]~~
Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 1 quart or 1 kg is exceeded; and

~~(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.~~

R315-262-209. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Where and When to Make the Hazardous Waste Determination and Where to Send Containers of Unwanted Material Upon Removal from the Laboratory.

(a) Large quantity generators and small quantity generators--an eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in any of the following areas:

(1) In the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210;

(2) Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with Section R315-262-211; and

(3) Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with Section R315-262-212.

~~(b) [Conditionally exempt]Very~~ small quantity generators~~---an~~ An eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to ~~[Section]Subsections~~ R315-262-11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210.

R315-262-210. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination in the Laboratory Before the Unwanted Material is Removed from the Laboratory.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in the laboratory, it shall comply with the following:

(a) A trained professional shall make the hazardous waste determination, pursuant to ~~[Section]Subsections~~ R315-262-11(a) through (d), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory; and

(2) Write the appropriate hazardous waste code(s) on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste is transported off-site.

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to ~~[Subsections R315-261-5(e) and (d)]~~Section R315-262-13, in the calendar month that the hazardous waste determination was made.

(c) A trained professional shall accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When hazardous waste is removed from the laboratory:

(1) Large quantity generators and small quantity generators shall ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(2) ~~Conditionally exempt small quantity generators shall ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in Subsection R315-261-5(f)(3) for acute hazardous waste, or Subsection R315-261-5(g)(3) for hazardous waste]~~ Very small quantity generators shall ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in Section R315-262-14.

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.

R315-262-211. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - Making the Hazardous Waste Determination at an On-Site Central Accumulation Area.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site central accumulation area, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) ~~The unwanted material becomes subject to the generator accumulation regulations of Subsection R315-262-34(a) for large quantity generators or Subsections R315-262-34(d) through (f) for small quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling requirements of Subsection R315-262-34(a)(3)]~~ The unwanted material becomes subject to the generator accumulation regulations of Section R315-262-16 for small quantity generators or Section R315-262-17 for large quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling conditions of Subsections R315-262-16(b)(6) and 17(a)(5).

(d) A trained professional shall determine, pursuant to ~~Section~~ Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed of on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator ~~[status]~~ category, pursuant to ~~[Subsection R315-261-5(e) and (d)]~~ Section R315-262-13 in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

R315-262-212. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination at an On-Site Interim Status or Permitted Treatment, Storage or Disposal Facility.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional shall determine, pursuant to ~~Section~~ Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to ~~Subsections R315-261-5(c) and (d)~~ in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

R315-262-213. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Laboratory Clean-outs.

(a) One time per 12 month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of Sections R315-262-200 through 216, except that:

(1) ~~If the volume of unwanted material in the laboratory exceeds 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, as required by Section R315-262-208. Instead, the eligible academic entity shall remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out~~ If the volume of unwanted material in the laboratory exceeds 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material, the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg or solid reactive acutely hazardous unwanted material, as required by Section R315-262-208. Instead, the eligible academic entity shall remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

(2) ~~For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through 35 or exhibiting one or more characteristics in Sections R315-261-20 through 24, generated solely during the laboratory clean-out toward its hazardous waste generator status, pursuant to Subsections R315-261-5(e) and (d). An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences shall be counted toward hazardous waste generator status, pursuant to Subsections R315-261-5(e) and (d), if it is determined to be hazardous waste~~ For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences shall be counted toward hazardous waste generator category, pursuant to Section R315-262-13, if it is determined to be hazardous waste; and

(3) ~~For the purposes of off-site management, an eligible academic entity shall count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator status~~

~~under Subsection R315-262-213(a)(2), and if it generates more than 1 kg/month of acute hazardous waste or more than 100 kg/month of hazardous waste, i.e., the conditionally exempt small quantity generator limits of Section R315-261-5, the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off-site~~ For the purposes of off-site management, an eligible academic entity shall count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under Subsection R315-262-213(a)(2), and if it generates more than 1 kg per month of acute hazardous waste or more than 100 kg per month of non-acute hazardous waste, i.e., the very small quantity generator limits as defined in Section R315-260-10, the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

(4) An eligible academic entity shall document the activities of the laboratory clean-out. The documentation shall, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity shall maintain the records for a period of three years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of Sections R315-262-200 through 216, including, but not limited to:

(1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, as required by Section R315-262-208; and

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator ~~[status]~~ category, pursuant to [Subsections R315-261-5(e) and (d)] Section R315-262-13.

R315-262-214. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Laboratory Management Plan.

An eligible academic entity shall develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with Sections R315-262-200 through 216. An eligible academic entity may write one Laboratory Management Plan for all the laboratories owned by the eligible academic entity that have opted into Sections R315-262-200 through 216, even if the laboratories are located at sites with different EPA Identification Numbers. The Laboratory Management Plan shall contain two parts with a total of nine elements identified in Subsections R315-262-214(a) and (b). In Part I of its Laboratory Management Plan, an eligible academic entity shall describe its procedures for each of the elements listed in Subsection R315-262-214(a). An eligible academic entity shall implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management

Plan. In Part II of its Laboratory Management Plan, an eligible academic entity shall describe its best management practices for each of the elements listed in Subsection R315-262-214(b). The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of Sections R315-262-200 through 216. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it chooses.

(a) The eligible academic entity shall implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe procedures for container labeling in accordance with Subsection R315-262-206(a), as follows:

(i) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(ii) Identifying the manner in which information that is "associated with the container" will be imparted.

(2) Identify whether the eligible academic entity will comply with Subsection R315-262-208(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe its intended best practices for container labeling and management, see the required standards at Section R315-262-206.

(2) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties, see the required standards at Subsection R315-262-207(a).

(3) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals, see the required standards at Subsection R315-262-207(d)(1).

(4) Describe its intended best practices for removing unwanted material from the laboratory, including:

(i) For regularly scheduled removals—Develop a regular schedule for identifying and removing unwanted materials from its laboratories, see the required standards at Subsections R315-262-208(a)(1) and (a)(2).

(ii) For removals when maximum volumes are exceeded:

(A) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes, see the required standards at Subsection R315-262-208(d).

(B) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process, see the required standards at

~~[Section]~~Subsections R315-262-11(a) through (d) and Sections R315-262-209 through R315-262-212.

(6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in Section R315-262-213, including:

(i) Procedures for conducting laboratory clean-outs, see the required standards at Subsections R315-262-213(a)(1) through (3); and

(ii) Procedures for documenting laboratory clean-outs, see the required standards at Subsection R315-262-213(a)(4).

(7) Describe its intended best practices for emergency prevention, including:

(i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and

(ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity shall make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity shall review and revise its Laboratory Management Plan, as needed.

R315-262-216. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity.

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under Sections R315-262-200 through 216; and

(a) Remains subject to the generator requirements of ~~[Section]~~Sections R315-262-11 and ~~[Subsection—R315-262-34(e)]~~R315-262-15 for large quantity generators and small quantity generators, if the hazardous waste is managed in a satellite accumulation area, and all other applicable generator requirements of Rule R315-262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of ~~[Subsection R315-261-5(b) for conditionally exempt]~~Section R315-262-14 for very small quantity generators, with respect to that hazardous waste.

R315-262-217. ~~[Appendix~~

~~Appendix to 40 CFR 262, 2015 edition, is adopted and incorporated by reference.]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/Officer'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/officer 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 40 CFR 265.72(b)), which is incorporated by reference in Section R315-265-1, 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 CFR 265.72(d), (e), or (f)), which are incorporated by reference in Section R315-265-1, 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(c) and CFR 265.72(c), which is incorporated by reference in Section R315-265-1).

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.

R315-262-230. Alternative Standards for Episodic Generation -- Applicability.

Sections R315-262-230 through 233 are applicable to very small quantity generators and small quantity generators as defined in Section R315-260-10.

R315-262-231. Alternative Standards for Episodic Generation -- Definitions for Sections R315-262-230 Through 233.

(a) "Episodic event" means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

(b) "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

(c) "Unplanned episodic event" means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

R315-262-232. Alternative Standards for Episodic Generation -- Conditions for a Generator Managing Hazardous Waste from an Episodic Event.

(a) Very small quantity generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under Section R315-262-233;

(2) Notification. The very small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700-12. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with Subsection R315-262-16(b)(9)(i):

(3) EPA ID Number. The very small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12:

(4) Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) Containers. A very small quantity generator accumulating in containers shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

(A) Mark or label the tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(iii) Hazardous waste shall be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water:

(A) Containers shall be in good condition and compatible with the hazardous waste being accumulated therein. Containers shall be kept closed except to add or remove waste; and

(B) Tanks shall be in good condition and compatible with the hazardous waste accumulated therein. Tanks shall have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks shall be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(5) The very small quantity generator shall comply with the hazardous waste manifest provisions of Sections R315-262-20 through 27 when it sends its episodic event hazardous waste off site to a designated facility, as defined in Section R315-260-10.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in Section R315-260-10.

(7) Very small quantity generators shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

(b) Small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under Section R315-262-233;

(2) Notification. The small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the small quantity generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700-12. The small quantity generator shall include the start date and end

date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) EPA ID Number. The small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12; and

(4) Accumulation by small quantity generators. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) Containers. A small quantity generator accumulating episodic hazardous waste in containers shall meet the standards at Subsection R315-262-16(b)(2) and shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating episodic hazardous waste in tanks shall meet the standards at Subsection R315-262-16(b)(3) and shall do the following:

(A) Mark or label its tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information on site and available for inspection.

(5) The small quantity generator shall treat hazardous waste generated from an episodic event on site or manifest and ship

such hazardous waste off site to a designated facility (as defined by Section R315-260-10) within sixty (60) calendar days from the start of the episodic event.

(6) The small quantity generator shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility (as defined by Section R315-260-10) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

R315-262-233 Alternative Standards for Episodic Generation -- Petition to Manage One Additional Episodic Event Per Calendar Year.

(a) A generator may petition the Director for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Director for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Director for an additional planned episodic event in that calendar year.

(b) The petition shall include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event - not to exceed sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition shall be made to the Director in writing, either on paper or electronically.

(d) The generator shall retain written approval in its records for three (3) years from the date the episodic event ended.

R315-262-250. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Applicability.

The regulations of Sections R315-262-250 through 265 apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.

R315-262-251. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Maintenance and Operation of Facility.

A large quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

R315-262-252. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Equipment.

All areas deemed applicable by Section R315-262-250 shall be equipped with the items in Subsections R315-262-252(a) through (d) (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

R315-262-253. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Testing and Maintenance of Equipment.

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

R315-262-254. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Access to Communications or Alarm System.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Section R315-262-252.

(b) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external

emergency assistance, unless such a device is not required under Section R315-262-252.

R315-262-255. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Aisle Space.

The large quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

R315-262-256. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Arrangements with Local Authorities.

(a) The large quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(c) A facility possessing 24-hour response capabilities may seek a waiver from the State Fire Marshal or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

R315-262-260. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Purpose and Implementation of Contingency Plan.

(a) A large quantity generator shall have a contingency plan for the facility. The contingency plan shall be designed to

minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

R315-262-261. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Content of Contingency Plan.

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-262-260 and 265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of Rule R315-262. The generator may develop one contingency plan that meets all regulatory standards. The plan should be based on the National Response Team's Integrated Contingency Plan Guidance, "One Plan."

(c) The plan shall describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to Section R315-262-256.

(d) The plan shall list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see Section R315-262-264), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position, e.g., operations manager, shift coordinator, shift operations supervisor, as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

R315-262-262. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Copies of Contingency Plan.

A copy of the contingency plan and all revisions to the plan shall be maintained at the large quantity generator and:

(a) The large quantity generator shall submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan shall at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee. The quick reference guide shall include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous waste present at any one time, e.g., toxic paint wastes, spent ignitable solvent, corrosive acid;

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;

(4) A map of the facility showing where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;

(5) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(6) The locations of water supply, e.g., fire hydrant and its flow rate;

(7) The identification of on-site notification systems, e.g., a fire alarm that rings off site, smoke alarms; and

(8) The name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators shall update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee.

R315-262-263. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Amendment of Contingency Plan.

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator facility changes--in its design, construction, operation, maintenance, or other circumstances--in a

way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

R315-262-264. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Coordinator.

At all times, there shall be at least one employee either on the generator's premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in Section R315-262-265. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator shall be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

R315-262-265. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or designee when the emergency coordinator is on call) shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, using their 24-hour toll free number 800-424-8802, and the Division of Waste Management and Radiation Control at 801-536-0200 or after hours at 801-536-4123. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of the generator;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f) If the generator stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that shall be managed in accordance with all the applicable requirements and conditions for exemption in Rules R315-262, 263, and 265.

(h) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator shall submit a written report on the incident to the Director. The report shall include:

(I) Name, address, and telephone number of the generator;

(II) Date, time, and type of incident, e.g., fire, explosion;

(III) Name and quantity of material(s) involved;

(IV) The extent of injuries, if any;

(V) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VI) Estimated quantity and disposition of recovered material that resulted from the incident.

KEY: hazardous waste, generators

Date of Enactment or Last Substantive Amendment: ~~June 10, 2016~~ 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-263-12
Transfer Facility Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41654

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-263 reflect those corresponding revisions made by the final HWGIR to 40 CFR 263, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-263 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of

this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total,

the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

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.

R315-263-12. Transfer Facility Requirements.

~~[A transporter who stores 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 is not subject to regulation under Rules R315-270, 264, 265, and 268 with respect to the storage of those wastes.]~~ (a) A transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements of Section R315-262-30 at a transfer facility for a period of ten (10) days or less is not subject to regulation under Rules R315-264, 265, 268, and 270 with respect to the storage of those wastes.

(b) When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different hazardous wastes that are compatible with each other, the transporter must mark its containers of 119 gallons or less with the following information:

(1) The words "Hazardous Waste" and

(2) The applicable EPA hazardous waste number(s), EPA hazardous waste codes, in Sections R315-261-20 through 24 and 30 through 35, or in compliance with Section R315-262-32(c).

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: ~~[April 15, 2016]~~ **2017**

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management**

R315-264

**Standards for Owners and Operators of
Hazardous Waste Treatment, Storage,
and Disposal Facilities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41655

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-264 reflect those corresponding revisions made by the final HWGIR to 40 CFR 264, as promulgated on 11/28/2016 (81 FR 85732) as well as minor corrections to Section R315-264-151. While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-264 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities

rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ LOCAL GOVERNMENTS: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ SMALL BUSINESSES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

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.

R315-264-1. General -- Purpose, Scope and Applicability.

(a) The purpose of Rule R315-264 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or 261.

(c) Reserved

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to:

(1) The owner or operator of a facility permitted under Rules R315-301 through 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 [~~Section R315-261-5~~] Rule R315-264 by Section R315-262-14;

(2) 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 R315-15 or Sections R315-266-20 through 23, 70, 80, or 100 through 112.

(3) A generator accumulating waste ~~[on-site]~~on site in compliance with Section ~~[R315-262-34]~~R315-262-14, R315-262-15, R315-262-16, or R315-262-17;

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) 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, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved

(8)(i) Except as provided in Subsection R315-264-1(g)(8)

(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 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 Rule R315-264 shall comply with all applicable requirements of Sections R315-264-30 through 35, 37 and 50 through 56.

(iii) Any person who is covered by Subsection R315-264-1(g)(8)(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 Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) 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.

(10) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsections R315-264-17(b), 264-171, and 264-172 are complied with.

(11) 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;

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-272-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(h) The requirements of Rule R315-264 apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved

(j) The requirements of Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do not apply to remediation waste management sites. However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through 19, 30 through 37, and 50 through 56, owners or operators of remediation waste management sites shall:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain all of the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and 268, and shall be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site shall not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, shall not cause a violation of the requirements of Rule R315-264;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and shall remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator shall take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of Rule R315-264, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Sections R315-264-170 through 179, 190 through 200, 220 through 232, 250 through 259, 270 Through 283, 300 through 317, 340 through 351, and 600 through 603, the owner/operator shall design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of Subsection R315-264-18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with Subsections R315-264-221(c) and (d), 264-251(c) and (d), and 264-301(c) and (d) at the remediation waste management site, according to the requirements of Section R315-264-19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through (j)(6) and (j)(9) through (j)(10); and

(13) Maintain records documenting compliance with Subsections R315-264-1(j)(1) through (j)(12).

R315-264-15. General Facility Standards -- General Inspection Requirements.

(a) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing-or may lead to-release of hazardous waste constituents to the environment or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, such as dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He shall keep this schedule at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, e.g., inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in Sections R315-264-174, 193, 195, 226, 254, 278, 303, 347, 602, 1033, 1052, 1053, 1058, and 1083 through 1089, where applicable. Rule R315-270 requires the inspection schedule to be submitted with part B of the permit application. The Director shall evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, The Director may modify or amend the schedule as may be necessary.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least three years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

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, of the manifest to the generator,

(v) Within 30 days of delivery, send the top copy, Page 1, of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the 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.

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and Utah Division of Waste Management and Radiation Control, P O Box 144880, Salt Lake City, Utah 84114-4880.

(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 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.]~~ 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) Within three working days of the receipt of a shipment subject to Sections R315-262-80 through 89 the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature.

(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. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic 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.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

R315-264-75. Manifest System, Recordkeeping, and Reporting -- Biennial Report.

~~[The owner or operator shall prepare and submit a single copy of a biennial report to the Director by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The report shall cover facility activities during the previous calendar year and shall include:~~

~~_____ (a) The EPA identification number, name, and address of the facility;~~

~~_____ (b) The calendar year covered by the report;~~

~~_____ (c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;~~

~~_____ (d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;~~

~~_____ (e) The method of treatment, storage, or disposal for each hazardous waste;~~

~~_____ (f) Reserved~~

~~_____ (g) The most recent closure cost estimate under Sections R315-264-142, and, for disposal facilities, the most recent post-closure cost estimate under Section R315-264-144; and~~

~~_____ (h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.~~

~~_____ (i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.~~

~~_____ (j) The certification signed by the owner or operator of the facility or his authorized representative.]The owner or operator shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even numbered year and shall cover activities during the previous year.~~

R315-264-151. Financial Requirements -- Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in Subsection R315-264-143(a) or Subsection R315-264-145(a) or 40 CFR 265.143(a) or 265.145(a), which are adopted by reference in Section R315-265-1; shall be worded as follows, except that instructions in parentheses,(), are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Utah Waste Management and Radiation Control Board has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Board" ~~[-]~~ means the "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(d) The term "Director" means the Director ~~[-]~~ of the Division of Waste Management and Radiation Control, his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste are granted.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Director of the Utah Division of Waste Management and Radiation Control. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and

profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director.

Section 4. Payment for Closure and Post-Closure Care.

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for closure and post-closure expenditures in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions Section R315-264-151. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

.....

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify

that the wording of this Agreement is identical to the wording specified in Subsection R315-264-151(m) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in Subsection R315-264-147(j) or 40 CFR 265.147(j), which is adopted by reference.

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(n)(1) A standby trust agreement, as specified in Subsection R315-264-147(h) or 40 CFR 265.147(h), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of a State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of _____" or "a national bank"), the "trustee."

Whereas the Utah Waste Management and Radiation Control Board, in accordance with the Utah Solid and Hazardous Waste Act, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Board", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director[-] of the Division of Waste Management and Radiation Control, his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste are granted.

(c) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ (up to \$1 million) per occurrence and _____ (up to \$2 million) annual aggregate for sudden accidental occurrences and _____ (up to \$3 million) per occurrence and _____ (up to \$6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from[-], and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned by (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director of the Utah Division of Waste Management and Radiation Control.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$().

(Signature)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of Subsection R315-264-151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions Section R315-264-151. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill,

prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and

the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-264-151(n) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in Subsection R315-264-147(h) or 40 CFR 265.147(h), which is adopted by reference.

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

R315-264-170. Use and Management of Containers -- [---] Applicability.

The regulations in Sections R315-264-170 through 179 apply to owners and operators of all hazardous waste facilities that store ~~containers of~~ hazardous waste in containers, except as Section R315-264-1 provides otherwise.

Under Section R315-261-7 and Subsection R315-261-33(c), if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is "empty" as defined in Section R315-261-7. In that event, management of the container is exempt from the requirements of Sections R315-264-170 through 179.

R315-264-174. Use and Management of Containers -- Inspections.

At least weekly, the owner or operator shall inspect areas where containers are stored. The owner or operator shall look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

See Subsection R315-264-15(c) and Section R315-264-171 for remedial action required if deterioration or leaks are detected.

R315-264-191. Tank Systems -- Assessment of Existing Tank System's Integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of Section R315-264-193, the owner or operator shall determine that the tank system is not leaking or is ~~unfit~~ otherwise fit for use. Except as provided in Subsection R315-264-191(c), the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with Subsection R315-270-11(d), that attests to the tank system's integrity.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

- (1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;
- (2) Hazardous characteristics of the waste(s) that have been and will be handled;
- (3) Existing corrosion protection measures;
- (4) Documented age of the tank system, if available (otherwise, an estimate of the age); and
- (5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with Subsection R315-270-11(d), that addresses cracks, leaks, corrosion, and erosion.

Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with Subsection R315-264-191(a), a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section R315-264-196.

R315-264-195. Tank Systems -- Inspections.

(a) The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator shall inspect at least once each operating day data gathered from monitoring and leak detection equipment, e.g., pressure or temperature gauges, monitoring wells, to ensure that the tank system is being operated according to its design.

Note: Subsection R315-264-15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section R315-264-196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

(c) In addition, except as noted under Subsection R315-264-195(d), the owner or operator shall inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, e.g., dikes, to detect erosion or signs of releases of hazardous waste, e.g., wet spots, dead vegetation.

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly those areas described in Subsections R315-264-195(c)(1) and (c)(2). Use of the alternate inspection schedule shall be documented in the facility's operating record. This documentation shall include a description of the established workplace practices at the facility.

(e) Reserved

(f) Ancillary equipment that is not provided with secondary containment, as described in Subsections R315-264-193(f)(1) through (4), shall be inspected at least once each operating day.

(g) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system shall be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current shall be inspected and/or tested, as appropriate, at least bimonthly, i.e., every other month.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(h) The owner or operator shall document in the operating record of the facility an inspection of those items in Subsections R315-264-195(a) through (c).

R315-264-1030. Air Emission Standards for Process Vents -- Applicability.

(a) The regulations in Sections R315-1030 through 1036 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section R315-264-1.

(b) Except for Subsections R315-264-1034(d) and (e), Sections R315-1030 through 1036 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 [~~Subsection R315-262-34(a)~~]Section R315-262-17, i.e., 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 Subsection R315-262-34(a), i.e., a "90-day" tank or container, and is not a recycling unit under the provisions of Section R315-261-6.

(c) For the owner and operator of a facility subject to Sections R315-264-1030 through ~~R315-264-1036~~ and who received a final permit under Section 19-6-108 prior to December 6, 1996, the requirements of Sections R315-~~264-1030~~ through 1036 shall be incorporated into the permit 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). Until such date when the owner and operator receive a final permit incorporating the requirements of Sections R315-~~264-1030~~ through ~~R315-264-1036~~, the owner and operator are subject to the requirements of [~~which is adopted by reference,~~]40 CFR 265.1030 through 265.1035, which is adopted by reference in Section R315-265-1.

Note: The requirements of Sections R315-264-1032 through 1036 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 R35-264-1(g) are not affected by these requirements.

(d) The requirements of [~~Sections R315-264-1030 through 1036~~]Subpart AA 40 CFR do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a permit issued pursuant to [~~the Utah Air Conservation Act~~]40 CFR 52.2454. The requirements of [~~Sections R315-264-1030 through 1036~~]Subpart AA 40 CFR shall apply to the facility upon termination of the permit issued pursuant to the [~~Utah Air Conservation Act~~]40 CFR 52.2454.

(e) The requirements of Sections R315-264-1030 through 1036 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 R315-264-1030 through 1036 are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable regulation codified under the Utah Air Conservation Act. The documentation of compliance under regulations codified under the Utah Air Conservation Act shall be kept with, or made readily available with, the facility operating record.

R315-264-1050. Air Emission Standards for Equipment Leaks -- Applicability.

(a) The regulations in Sections R315-264-1050 through 1065 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section R315-264-1.

(b) Except as provided in Subsection R315-264-1064(k), Sections R315-264-1050 through 1065 apply to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed 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 Subsection R315-262-34(a), i.e., 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 [~~Subsection R315-262-34(a)~~]Section R315-262-17, i.e., a "90-day" tank or container, and is not a recycling unit under the provisions of Section R315-261-6.

(c) For the owner or operator of a facility subject to Sections R315-264-1050 through 1065 and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of Sections R315-264-1050 through 1065 shall be incorporated into the permit 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). Until such date when the owner or operator receives a final permit incorporating the requirements of Sections R315-264-1050 through 1065, the owner or operator is subject to the requirements of 40 CFR 265.1050 through 265.1064, which are adopted by reference in Section R315-265-1.

(d) Each piece of equipment to which Sections R315-264-1050 through 1065 applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of Sections R315-264-1052 ~~to 1060~~ through R315-264-1060 if it is identified as required in Subsection R315-264-1064(g)(5).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections R315-264-1052 through 1060 if it is identified, as required in Subsection R315-264-1064(g)(6).

(g) The requirements of ~~[Sections R315-264-1050 through 1065]~~ Subpart BB 40 CFR do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a permit issued pursuant to ~~[the Utah Air Conservation Act]~~ 40 CFR 52.2454. The requirements of ~~[Sections R315-264-1050 through 1065]~~ Subpart BB 40 CFR shall apply to the facility upon termination of the permit issued pursuant to the ~~[Utah Air Conservation Act]~~ 40 CFR 52.2454.

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at R307-214-2(61), which incorporates 40 CFR part 63 subpart IIII, are not subject to the requirements of Sections R315-264-1050 through 1065.

Note: The requirements of Sections R315-264-1052 through 1065 apply to equipment associated with hazardous waste recycling units previously exempt under Subsection R315-261-6(c)(1). Other exemptions under Section R315-261-4, and Subsection R315-264-1(g) are not affected by these requirements.

R315-264-1101. Containment Buildings -- Design and Operating Standards.

(a) All containment buildings shall comply with the following design standards:

(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind, run-on, and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under Subsection R315-264-1101(b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. the Director shall consider standards established by professional organizations generally recognized by

the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of Subsection R315-264-1101(a). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under Subsection R315-264-1101(c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids, the presence of which is determined by the paint filter test, a visual examination, or other appropriate means, the owner or operator shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier, e.g., a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 30.5 cm (12 inches) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Subsection R315-264-193(e)(1). In addition, the containment building shall meet the requirements of Subsections R315-264-193(b) and 193(c)(1) and (2) to be considered an acceptable secondary containment system for a tank.

(4) For existing units other than 90-day generator units, the Director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of Sections R315-264-1100 and 1102. In making this demonstration, the owner or operator shall:

(i) Provide written notice to the Director of their request by November 16, 1992. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Director on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Director.

(c) Owners or operators of all containment buildings shall:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinseate shall be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings, doors, windows, vents, cracks, etc., exhibit no visible emissions, see 40 CFR part 60, appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares. In addition, all associated particulate collection devices, e.g., fabric filter, electrostatic precipitator, shall be operated and maintained with sound air pollution control practices, see 40 CFR part 60 subpart 292 for guidance. This state of no visible emissions shall be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of Subsections R315-264-1101(a), (b), and (c).

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste, e.g., upon detection of leakage from the primary barrier, the owner or operator shall:

(A) Enter a record of the discovery in the facility operating record;

(B) Immediately remove the portion of the containment building affected by the condition from service;

(C) Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director shall review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator shall notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-264-1101(c)(3)(i)(D).

(4) Inspect and record in the ~~facility's~~ facility operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements enumerated in Subsections R315-264-1101(a) through (c);

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of Subsection R315-264-1100 through 1102 the Director may waive requirements for secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

KEY: hazardous waste, TSD facilities

Date of Enactment or Last Substantive Amendment: ~~June 10, 2016~~ 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-265-1
Incorporation**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41656
FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-265-1 reflect those corresponding revisions made by the final HWGIR to 40 CFR 265, as promulgated on 11/28/2016 (81 FR 85732). The proposed change revises the incorporation by reference to include the Federal Register of 11/28/2016. While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-265-1 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in

less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by

applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

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.

40 CFR 265, 2015 edition, as amended by 81 FR 85827, is adopted and incorporated by reference with the following exceptions:

(a) Substitute "Director" for all references to "Regional Administrator:"

(b) Substitute "Director" or "Board" for EPA as appropriate except for references to "EPA identification number and where EPA is used in reference to actions under 40 CFR 268.42(b) and in 265.71(a)(3);

(c) Substitute "Utah Division of Waste Management and Radiation Control " or "Director" as appropriate for "Environmental Protection Agency;" and

(d) The language that reads "If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" in 40 CFR 265.143(g) and 256.145(g) is changed to read as follows: If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to the Director as is submitted to all other states and to all appropriate EPA Regional Administrators.

(e) Add, following December 6, 1990, in 40 CFR 265.440(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(f) Add, following December 24, 1992, in 40 CFR 265-440(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

KEY: hazardous waste, TSD facilities, interim status

Date of Enactment or Last Substantive Amendment: [~~April 15, 2016~~2017]

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-266-80
Spent Lead-Acid Batteries Being
Reclaimed -- Applicability and
Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41657

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-266-80 reflect those corresponding revisions made by the final HWGIR to 40 CFR 266.80, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-266-80 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for

added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ LOCAL GOVERNMENTS: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ SMALL BUSINESSES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

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DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

R315-266-80. Spent Lead-Acid Batteries Being Reclaimed -- Applicability and Requirements.

(a) Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or regenerate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use Subsections R315-266-80(a)(1) through (7) to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the "Universal Waste" rule in Rule R315-273.

(1) If your batteries will be reclaimed through regeneration, such as by electrolyte replacement, then you are exempt from Rules R315-262, except for Section R315-262-11; 263; 264; 265; 266; 268; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11.

(2) If your batteries will be reclaimed other than through regeneration and if you generate, collect, and/or transport these batteries then you are exempt from Rule R315-262, except for Section R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(3) If your batteries will be reclaimed other than through regeneration and if you store these batteries but you aren't the reclaimer then you are exempt from Rule R315-262, except for Section R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(4) If your batteries will be reclaimed other than through regeneration and if you store these batteries before you reclaim them then you shall comply with Subsection R315-266-80(b) and as appropriate other regulatory provisions described in Subsection R315-266-80(b) and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(5) If your batteries will be reclaimed other than through regeneration and if you don't store these batteries before you reclaim them then you are exempt from Rule R315-262, except for Section R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(6) If your batteries will be reclaimed through regeneration or any other means and if you export these batteries for reclamation in a foreign country ~~[the]then~~ you are exempt from Rules R315-262 (except for Sections R315-262-11, R315-262-18, and R315-262-80 through R315-262-84) R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, R315-124, and the notification requirements at section 3010 of RCRA~~[-]~~ and ~~[You]you~~ are ~~[also exempt from Rule R315-262, except for Section R315-262-11, and except for the applicable requirements in either Sections R315-262-80 through 89; or Section R315-262-53 "Notification of Intent to Export, Subsection R315-262-56(a)(1) through (4)(6) and (b) "Annual Reports," and Section R315-262-57 "Recordkeeping" and you are subject to Rule R315-261 and Section R315-262-11, and either shall comply with Sections R315-262-80 through 89, if shipping to one of the OECD countries specified in Subsection R315-262-58(a)(1)), or shall:~~

~~(i) Comply with the requirements applicable to a primary exporter in Subsections R315-262-53, 56(a)(1) through (4), (6), and (b) and Section R315-262-57; and~~

~~(ii) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Sections R315-262-50 through 58; and~~

~~(iii) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export]subject to Rule R315-261, Sections R315-262-11 and R315-262-18, and Sections R315-262-80 through R315-262-84.~~

(7) If your batteries will be reclaimed through regeneration or any other means and if you transport these batteries in the U.S. to export them for reclamation in a foreign country then you are exempt from Rules R315-263, 264, 265, 266, 268, 270, 124,

and the notification requirements at section 3010 of RCRA and you shall comply with applicable requirements in Sections R315-262-80 through ~~[89]R315-262-84~~, if shipping to one of the OECD countries specified in Subsection R315-262-58(a)(1), or shall comply with the following:

(i) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent;

(ii) you shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(iii) you shall ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

(b) If I store spent lead-acid batteries before I reclaim them but not through regeneration, which requirements apply? The requirements of Subsection R315-266-80(b) apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your permit status.

(1) For Interim Status Facilities, you shall comply with:

(i) Notification requirements under section 3010 of RCRA.

(ii) All applicable provisions in 40 CFR 265.1 through ~~[4]265.4~~, which are adopted by reference in Section R315-265-1.

(iii) All applicable provisions in 40 CFR 265.10 through ~~[+9]265.19~~, which are adopted by reference in Section R315-265-1, except Section 265.13, waste analysis.

(iv) All applicable provisions in 40 CFR 265.30 through 265.56, which ~~[is]are~~ adopted by reference in Section R315-265-1.

(v) All applicable provisions in 40 CFR 265.70 through 77, which are adopted by reference, except 265.71 and 265.72, dealing with the use of the manifest and manifest discrepancies.

(vi) All applicable provisions in 40 CFR 265.90 through 265.260, which are adopted by reference in Section R315-265-1.

(vii) All applicable provisions in Rules R315-270 and 124.

(2) For Permitted Facilities:

(i) Notification requirements under section 3010 of RCRA.

(ii) All applicable provisions in Sections R315-264-1 through 4.

(iii) All applicable provisions in Sections R315-264-10 through 19, but not Section R315-264-13, waste analysis.

(iv) All applicable provisions in Sections R315-264-30 through 56.

(v) All applicable provisions in Sections R315-264-70 through 77, but not Sections R315-264-71 or 72, dealing with the use of the manifest and manifest discrepancies.

(vi) All applicable provisions in Sections R315-264-90 through 259.

(vii) All applicable provisions in Rules R315-270 and 124.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: ~~[April 15, 2016]~~2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-268
Land Disposal Restrictions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41658

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-268 reflect those corresponding revisions made by the final HWGIR to 40 CFR 268, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-268 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-268. Land Disposal Restrictions.

R315-268-1. Land Disposal Restrictions -- Purpose, Scope, and Applicability.

(a) Rule R315-268 identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in Rule R315-268 or Rule R315-261, the requirements of Rule R315-268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) Where persons have been granted an extension to the effective date of a prohibition under Sections R315-268-20 through 39 or pursuant to Section R315-268-5, with respect to those wastes covered by the extension;

(2) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, or 40 CFR 148, are not prohibited if the wastes:

(i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and

(ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Sections R315-261-20 through 24, at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Section R315-268-40, or are D003 reactive cyanide:

(i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or

(ii) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

(iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in Subsection R315-268-37(a); and

(iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal, i.e., placement in a surface impoundment.

(d) The requirements of Rule R315-268 shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Rule R315-268:

(1) Waste generated by very small quantity generators ~~of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in Section R315-261-5], as defined in Section R315-260-10;~~

(2) Waste pesticides that a farmer disposes of pursuant to Section R315-262-70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards;

(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, are exempt from Sections R315-268-7 and 268-50 for the hazardous wastes listed below. These handlers are subject to regulation under Rule R315-273.

(1) Batteries as described in Section R315-273-2;

(2) Pesticides as described in Section R315-273-3;

(3) Mercury-containing equipment as described in Section R315-273-4; and

(4) Lamps as described in Section R315-273-5.

R315-268-7. Land Disposal Restrictions -- Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and Disposal Facilities.

(a) Requirements for generators:

(1) A generator of hazardous waste shall determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in Sections R315-268-40, 45, or 49. This determination can be made concurrently with the hazardous waste determination required in Section R315-262-11, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference, see Section R315-260-11, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. Alternatively, the generator shall send the waste to a hazardous waste treatment facility permitted under Section 19-6-108, where the waste treatment facility shall comply with the requirements of Section R315-264-13 and Subsection R315-268-7(b). In addition, some hazardous wastes shall be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in Section R315-268-40, and are described in detail in Section R315-268-42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested, however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested. If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they shall comply with the special requirements of Section R315-268-9 in addition to any applicable requirements in Section R315-268-7.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste shall be treated, with the initial shipment of waste to each treatment or storage facility, the generator shall send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice shall include the information in column "268-7(a)(2)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4). Alternatively, if the generator chooses not to make the determination of whether the waste shall be treated, the notification shall include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and shall state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility shall make the determination." No further notification is necessary until such time that the waste or facility change, in which case a new notification shall be sent and a copy placed in the generator's file.

(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator shall send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice shall include the information indicated in column "268-7(a)(3)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Sections R315-268-40 through 49. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator shall send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice shall include the information in column "268-7(a)(3)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4).

(iii) If the waste changes, the generator shall send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under Subsection R315-261-3(f) are not subject to these requirements.

(4) For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under Section R315-268-5, disposal in a no-migration unit under Section R315-268-6, or a national capacity variance or case-by-case capacity variance under Sections R315-268-20 through 39. If a generator's waste is so exempt, then with the initial shipment of waste, the generator shall send a one-time written notice to each land disposal facility receiving the waste. The notice shall include the information indicated in column "268-7(a)(4)" of the Generator Paperwork Requirements Table below. If the waste changes, the generator shall send a new notice to the receiving facility, and place a copy in their files.

TABLE 1

Generator Paperwork Requirements

Required information	268-7 (a)(2)	268-7 (a)(3)	268-7 (a)(4)	268-7 (a)(9)
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	X	X	X	X
2. Statement: this waste is not prohibited from land disposal			X	
3. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice	X	X		
4. The notice shall include the applicable wastewater/nonwastewater category (see Section R315-268-2(d) and (f)) and subdivisions made within a	X		X	

waste code based on waste-specific criteria (such as D003 reactive cyanide)			
5. Waste analysis data, when available	X	X	X
6. Date the waste is subject to the prohibition			X
7. For hazardous debris, when treating with the alternative treatment technologies provided by Section R315-268-45: the contaminants subject to treatment, as described in Section R315-268-45(b); and an indication that these contaminants are being treated to comply with Section R315-268-45	X		X
8. For contaminated soil subject to LDRs as provided in Section R315-268-49(a), the constituents subject to treatment as described in Section R315-268-49(d), and the following statement: This contaminated soil, does/does not, contain listed hazardous waste and, does/does not, exhibit a characteristic of hazardous waste and, is subject to/complies with, the soil treatment standards as provided by Section R315-268-49(c) or the universal treatment standards	X	X	
9. A certification is needed, see applicable section for exact wording		X	X

~~(5) [If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under Section R315-262-34 to meet applicable LDR treatment standards found at Section R315-268-40, the generator shall develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. Generators treating hazardous debris under the alternative treatment standards of Table 1, Section R315-268-45, however, are not subject to these waste analysis requirements. The plan shall be kept on site in the generator's records, and the following requirements shall be met]If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under Sections R315-262-15, 16, and 17 to meet applicable LDR treatment standards found at Section R315-268-40, the generator shall develop and follow a written waste analysis plan which describes the procedures it will carry out to comply with the treatment standards. Generators treating hazardous debris under the alternative treatment standards of Table 1 to Section R315-268-45, however, are not subject to these waste analysis requirements. The plan must be kept on site in the generator's records, and the following requirements must be met:~~

(i) The waste analysis plan shall be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of Rule R315-268, including the selected testing frequency.

(ii) Such plan shall be kept in the facility's on-site files and made available to inspectors.

(iii) Wastes shipped off-site pursuant to Subsection R315-268-7(a) shall comply with the notification requirements of Subsection R315-268-7(a)(3).

(6) If a generator determines that the waste or contaminated soil is restricted based solely on his knowledge of the waste, all supporting data used to make this determination shall be retained on-site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as referenced in Section R315-260-11, and all waste analysis data shall be retained on-site in the generator's files.

(7) If a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from regulation under Sections R315-261-2 through 6 subsequent to the point of generation, including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified at Subsection R315-261-4(a)(2) or that are CWA-equivalent, or are managed in an underground injection well regulated by the SDWA, he shall place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from regulation under Sections R315-261-2 through 6, and the disposition of the waste, in the facility's on-site files.

(8) Generators shall retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to Section R315-268-7 for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director. The requirements of Subsection R315-268-7(a) apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under Sections R315-261-2 through 6, or exempted from hazardous waste regulation, subsequent to the point of generation.

(9) If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at Subsection R315-268-42(c):

(i) With the initial shipment of waste to a treatment facility, the generator shall submit a notice that provides the information in column "268-7(a)(9)" in the Generator Paperwork Requirements Table of Subsection R315-268-7(a)(4), and the following certification. The certification, which shall be signed by an authorized representative and shall be placed in the generator's files, shall say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to Rule R315-268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at Subsection R315-268-42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(ii) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification shall be sent and a copy placed in the generator's file.

(iii) If the lab pack contains characteristic hazardous wastes, D001-D043 excluding D009, underlying hazardous constituents, as defined in Subsection R315-268-2(i) need not be determined.

(iv) The generator shall also comply with the requirements in Subsections R315-268-7(a)(6) and (a)(7).

(10) Small quantity generators with tolling agreements pursuant to Subsection R315-262-20(e) shall comply with the applicable notification and certification requirements of Subsection R315-268-7(a) for the initial shipment of the waste subject to the agreement. Such generators shall retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(b) Treatment facilities shall test their wastes according to the frequency specified in their waste analysis plans as required by Section R315-264-13, for permitted TSDs, or 40 CFR 265.13, which is adopted by reference, for interim status facilities. Such testing shall be performed as provided in Subsections R315-268-7(b)(1), (b)(2) and (b)(3).

(1) For wastes or contaminated soil with treatment standards expressed in the waste extract (TCLP), the owner or operator of the treatment facility shall test an extract of the treatment residues, using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in Section R315-260-11, to assure that the treatment residues extract meet the applicable treatment standards.

(2) For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility shall test the treatment residues, not an extract of such residues, to assure that they meet the applicable treatment standards.

(3) A one-time notice shall be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice shall be placed in the treatment facility's file.

(i) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice shall be sent and a copy placed in the treatment facility's file.

(ii) The one-time notice shall include these requirements:

TABLE 2

Treatment Facility Paperwork Requirements

Required information	268-7(b)
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	X
2. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	X

3. The notice shall include the applicable wastewater/ nonwastewater category, see Subsections R315-268-2(d) and (f) and subdivisions made within a waste code based on waste-specific criteria, such as D003 reactive cyanide	X
4. Waste analysis data, when available	X
5. For contaminated soil subject to LDRs as provided in Subsection R315-268-49(a), the constituents subject to treatment as described in Subsection R315-268-49(d) and the following statement, "this contaminated soil, does/does not, exhibit a characteristic of hazardous waste and, is subject to/complies with, the soil treatment standards as provided by Subsection R315-268-49(c)".	X
6. A certification is needed, see applicable section for exact wording	X

(4) The treatment facility shall submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in Section R315-268-40 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in Section R315-268-49 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(i) A copy of the certification shall be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification shall be sent to the receiving facility, and a copy placed in the file.

(ii) Debris excluded from the definition of hazardous waste under Subsection R315-261-3(f), i.e., debris treated by an extraction or destruction technology provided by Table 1, Section R315-268-45, and debris that the Director has determined does not contain hazardous waste, however, is subject to the notification and certification requirements of Subsection R315-268-7(d) rather than the certification requirements of Subsection R315-268-7(b).

(iii) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in Subsection R315-268-40(d), the certification, signed by an authorized representative, shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification.

Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in Section R315-268-42, Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(iv) For characteristic wastes that are subject to the treatment standards in Section R315-268-40, other than those expressed as a method of treatment, or Section R315-268-49, and that contain underlying hazardous constituents as defined in Subsection R315-268-2(i); if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section R315-268-40 or 49 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(v) For characteristic wastes that contain underlying hazardous constituents as defined Subsection R315-268-2(i) that are treated on-site to remove the hazardous characteristic to treat underlying hazardous constituents to levels in Section R315-268-48 Universal Treatment Standards, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section R315-268-40 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in Subsection R315-268-2(i) have been treated on-site to meet the Section R315-268-48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(5) If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste or treatment residue off-site shall comply with the notice and certification requirements applicable to generators under Section R315-268-7.

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of Subsection R315-266-20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility, i.e., the recycler, shall, for the initial shipment of waste, prepare a one-time certification described in Subsection R315-268-7(b)(4), and a one-time notice which includes the information in Subsection R315-268-7(b)(3), except the manifest number. The certification and notification shall be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification shall be prepared and placed in the on-site files. In addition, the recycling facility shall also keep records of the name and location of each entity receiving the hazardous waste-derived product.

(c) Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to Subsection R315-266-20(b), the owner or

operator of any land disposal facility disposing any waste subject to restrictions under Rule R315-268 shall:

(1) Have copies of the notice and certifications specified in Subsection R315-268-7(a) or (b).

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in Section R315-260-11, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Sections R315-268-40 through 49. Such testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by Section R315-264-13 or 40 CFR 265.13, which is adopted by reference.

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under Subsection R315-261-3(f), i.e., debris treated by an extraction or destruction technology provided by Table 1, Section R315-268-45, and debris that the Director has determined does not contain hazardous waste, are subject to the following notification and certification requirements:

(1) A one-time notification, including the following information, shall be submitted to the Director:

(i) The name and address of the Subtitle D facility receiving the treated debris;

(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under Subsection R315-261-3(f)(1), the technology from Table 1, Section R315-268-45, used to treat the debris.

(2) The notification shall be updated if the debris is shipped to a different facility, and, for debris excluded under Subsection R315-261-2(f)(1), if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under Subsection R315-261-3(f)(1), the owner or operator of the treatment facility shall document and certify compliance with the treatment standards of Table 1, Section R315-268-45, as follows:

(i) Records shall be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(ii) Records shall be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(iii) For each shipment of treated debris, a certification of compliance with the treatment standards shall be signed by an authorized representative and placed in the facility's files. The certification shall state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of Section R315-268-45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

(e) Generators and treaters who first receive from the Director a determination that a given contaminated soil subject to LDRs as provided in Subsection R315-268-49(a) no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to LDRs as provided in

Subsection R315-268-49(a) no longer exhibits a characteristic of hazardous waste shall:

- (1) Prepare a one-time only documentation of these determinations including all supporting information; and,
- (2) Maintain that information in the facility files and other records for a minimum of three years.

R315-268-50. Land Disposal Restrictions -- Prohibitions on Storage of Restricted Wastes.

(a) Except as provided in Section R315-268-50, the storage of hazardous wastes restricted from land disposal under Sections R315-268-20 through 39 is prohibited, unless the following conditions are met:

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in ~~[Section R315-262-34]~~Sections R315-262-16 and R315-262-17, and Rules R315-264 and R315-265.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(i) Each container is clearly marked to identify its contents and ~~[the date each period of accumulation begins]~~ with:

(A) The words "Hazardous Waste";

(B) The applicable EPA hazardous waste number(s), EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste number(s);

(C) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172, subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(D) The date each period of accumulation begins;

(ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator shall comply with the operating record requirements specified in Section R315-264-73 or 40 CFR 265.73, which are adopted by reference.

(3) A transporter stores manifested shipments of such wastes at a transfer facility for 10 days or less.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Director can demonstrate that such storage was not solely for the purpose of

accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste, for example, because of an approved case-by-case extension under Section R315-268-5, an approved Section R315-268-6 petition, or a national capacity variance under Sections R315-268-20 through 39, the prohibition in Subsection R315-268-50(a) does not apply during the period of such exemption.

(e) The prohibition in Subsection R315-268-50(a) does not apply to hazardous wastes that meet the treatment standards specified under Sections R315-268-41, 42, and 43 or the treatment standards specified under the variance in Section R315-268-44, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in Section R315-268-32 or RCRA section 3004.

(f) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm shall be stored at a facility that meets the requirements of 40 CFR 761.65(b) and shall be removed from storage and treated or disposed as required by Rule R315-268 within one year of the date when such wastes are first placed into storage. The provisions of Subsection R315-268-50(c) do not apply to such PCB wastes prohibited under Section R315-268-32.

(g) The prohibition and requirements in Section R315-268-50 do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to Section R315-264-554.

KEY: hazardous waste, land disposal restrictions

Date of Enactment or Last Substantive Amendment: ~~[April 15, 2016]~~2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-270-1
Hazardous Waste Permit Program --
Purpose and Scope of These
Regulations**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41659

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-270-1 reflect those corresponding revisions made by the final HWGIR to 40 CFR 270.1, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-270-1 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an

undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-270. Hazardous Waste Permit Program.

R315-270-1. Hazardous Waste Permit Program -- Purpose and Scope of These [Regulations]Rules.

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Director for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit as required by Section R315-270-1 and Section 19-6-108 for that facility, may continue to operate that facility without violating Section R315-270-1 until such time as the permit is approved or disapproved pursuant to Section R315-270-1.

(b)(1) The Director shall review each proposed hazardous waste permit application to determine whether the application will be in accord with the provisions of Rules R315-260 through 266, 268, 270 and 273, and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the Director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Director as required by Rule R315-270.

(2) Any permit application which does not meet the requirements of Rules 315-260 through 266, 268 270 and 273 shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the Director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Director for a decision or seek judicial relief requiring a decision of approval or disapproval.

(3) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the Director sets for each individual facility for submitting part B of the application, which date shall be

in no case less than six months after the Director gives notice to a particular facility that it shall submit part B of the application.

(c) Scope of the hazardous waste permit requirement. Section 19-6-108 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in Rule R315-261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in Section R315-270-2. Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to 40 CFR 265.115, which is adopted by reference, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections R315-270-1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection R315-270-1(c)(7). If a post-closure permit is required, the permit shall address applicable Rule R315-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under Section R315-270-1.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a Utah or Federal UIC permit, shall be deemed to have a "permit by rule" for the injection well itself if they comply with the requirements of Subsection R315-270-60(b).

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a "permit by rule" for that waste if they comply with the requirements of Section R315-270-60(c).

(2) Specific exclusions and exemptions. The following persons are among those who are not required to obtain a hazardous waste permit:

(i) Generators who accumulate hazardous waste on-site ~~[for less than the time periods provided in Section R315-262-34]~~ in compliance with all of the conditions for exemption provided in Sections R315-262-14, R315-262-15, R315-262-16, and R315-262-17.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in Section R315-262-70;

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under Rule R315-270 by ~~[Sections]~~ Section R315-261-4 or [5]Section R315-262-14, very small quantity generator exemption.

(iv) Owners or operators of totally enclosed treatment facilities as defined in Section R315-260-10.

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section R315-260-10.

(vi) Transporters 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.

(vii) Persons adding absorbent material to waste in a container, as defined in Section R315-260-10, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsection R315-264-17(b) and Sections R315-264-171, and 172 are complied with.

(viii) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, managing the wastes listed below. These handlers are subject to regulation under Rule R315-273.

(A) Batteries as described in Section R315-273-2;

(B) Pesticides as described in Section R315-273-3;

(C) Mercury-containing equipment as described in Section R315-273-4; and

(D) Lamps as described in Section R315-273-5.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken 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 hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Rule R315-270 for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The Director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Rule R315-265 standards shall obtain a post-closure permit unless they can demonstrate to the Director that the closure met the standards for closure by removal or decontamination in Section R315-264-228, Subsection R315-264-280(e), or Section R315-264-258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Rule R315-264 closure by removal standards were met. If the Director believes that Rule R315-264 standards were met, The Director shall notify the public of this proposed decision,

allow for public comment, and reach a final determination according to the procedures in Subsection R315-270-1(c)(6).

(ii) If the owner/operator has not submitted a part B application for a post-closure permit, the owner/operator may petition the Director for a determination that a post-closure permit is not required because the closure met the applicable Rule R315-264 closure standards.

(A) The petition shall include data demonstrating that closure by removal or decontamination standards of Rule R315-264 were met.

(B) The Director shall approve or deny the petition according to the procedures outlined in Subsection R315-270-1(c)(6).

(6) Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under Subsection R315-270-1(c)(5), the Director shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Director shall also, in response to a request or at the Director's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Rule R315-265 closure to a Rule R315-264 closure. The Director shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(ii) The Director shall determine whether the Rule R315-265 closure met the Rule R315-264 closure by removal or decontamination requirements within 90 days of its receipt. If the Director finds that the closure did not meet the applicable Rule R315-264 standards, the Director shall provide the owner/operator with a written statement of the reasons why the closure failed to meet Rule R315-264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Director shall review any additional information submitted and make a final determination within 60 days.

(iii) If the Director determines that the facility did not close in accordance with Rule R315-264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 CFR 265.121, which is adopted by reference. "Enforceable document" means an order, a permit, or other document issued by the Director including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [~~April 15, 2016~~2017]

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-273
Standards for Universal Waste
Management**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41660

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Rule R315-273 reflect those corresponding revisions made by the final HWGIR to 40 CFR 273, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Rule R315-273 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION

CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
- ◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-273. Standards for Universal Waste Management.

R315-273-8. Standards for Universal Waste Management -- Applicability -- Household and [~~Conditionally Exempt~~]Very Small Quantity Generator Waste.

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of Rule R315-273:

(1) Household wastes that are exempt under Subsection R315-261-4(b)(1) and are also of the same type as the universal wastes defined at Section R315-273-9; and/or

(2) [~~Conditionally exempt~~]Very small quantity generator wastes that are exempt under Section [~~R315-261-5~~]R315-262-14 and are also of the same type as the universal wastes defined at Section R315-273-9.

(b) Persons who commingle the wastes described in Subsections R315-273-8(a)(1) and (a)(2) together with universal waste regulated under Rule R315-273 shall manage the commingled waste under the requirements of Rule R315-273.

R315-273-81. Standards for Universal Waste Management -- Factors for Petitions to Include Other Wastes Under Rule R315-273.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in Sections R315-261-30 through 3, or, if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Sections R315-261-20 through 24. When a characteristic waste is added to the universal waste regulations of this Rule R315-273 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in Section R315-260-10 and Section R315-273-9 shall be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of Rule R315-273;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments, including, for example, households, retail and commercial businesses, office complexes, [~~conditionally exempt~~]very small quantity generators, small businesses, government organizations, as well as large industrial facilities;

(c) The waste or category of waste is generated by a large number of generators, e.g., more than 1,000 nationally, and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste, including packaging, marking, and labeling practices, would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner, e.g., waste management requirements appropriate to be added to Sections R315-273-13, 33, and 52; and/or applicable Department of Transportation requirements, would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under Rule R315-273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems; e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems; to recycling; treatment; or disposal in compliance with Title 19 Chapter 6.

(g) Regulation of the waste or category of waste under Rule R315-273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

KEY: hazardous waste, universal waste

Date of Enactment or Last Substantive Amendment: [~~June 10, 2016~~]2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-301-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41661

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal

Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-301-2 reflect those corresponding revisions made by the final HWGIR to 40 CFR 258, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-301-2 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 258 and Section 19-6-105 and Section 19-6-106 and Section 19-6-108 and Section 19-6-109

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small

businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-301. Solid Waste Authority, Definitions, and General Requirements.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a ~~conditionally exempt~~very small quantity generator of hazardous waste, as defined by Section ~~[R315-2-5]~~R315-260-10; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a ~~conditionally exempt~~very small quantity generator of hazardous waste, as defined by Section ~~[R315-2-5]~~R315-260-10.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Director to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a ~~conditionally exempt~~very small quantity generator of hazardous waste, as defined by Section ~~[R315-2-5]~~R315-260-10.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste, excluding waste from a ~~conditionally exempt~~very small quantity generator of hazardous waste, as defined by Section ~~[R315-2-5]~~R315-260-10;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill

including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a [conditionally exempt]very small quantity generator of hazardous waste, as defined by Section [R315-2-5]R315-260-10, that may be generated by these operations.

(a) Such waste may include:

- (i) concrete, bricks, and other masonry materials;
- (ii) soil and rock;
- (iii) waste asphalt;
- (iv) rebar contained in concrete; and
- (v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

- (i) friable asbestos;
- (ii) treated wood; or
- (iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Director; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section [R315-2-3]R315-261-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a [conditionally exempt]very small quantity generator of hazardous waste, as defined by Section [R315-2-5]R315-260-10, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by

crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Director;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section ~~[R315-2-4]~~R315-261-4;

(ix) ~~[conditionally exempt]~~very small quantity generator hazardous waste as defined by Section ~~[R315-2-5]~~R315-260-10;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

(72) "State" means the State of Utah.

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

- (a) creosote or related compounds;
- (b) Arsenic;
- (c) Chromium; or
- (d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

- (i) whole waste tires used as a fence;
- (ii) whole waste tires used as a windbreak; and
- (iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

KEY: solid waste management, solid waste disposal

Date of Enactment or Last Substantive Amendment: [~~April 25, 2013~~2017]

Notice of Continuation: February 13, 2013

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-304-3** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41662

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-304-3 reflect those corresponding revisions made by the final HWGIR to 40 CFR 257, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-304-3 and into the other companion rules of Title R315, the revisions promulgated by

EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 257 and Section 19-6-105 and Section 19-6-108

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the

national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-304. Industrial Solid Waste Landfill Requirements.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) ~~conditionally exempt~~ very small quantity generator hazardous waste as defined by Section ~~[R315-2-5]~~ **R315-260-10**.

(2) "Class IIIb Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, excluding Subsections R315-2-4(b)(3), (4), (5), (7), and (14), unless approved by the Director; or

(b) ~~[conditionally exempt]~~very small quantity generator hazardous waste as defined by Section ~~[R315-2-5]~~R315-260-10.

KEY: solid waste management, solid waste disposal

Date of Enactment or Last Substantive Amendment: ~~[April 25, 2013]~~2017

Notice of Continuation: February 13, 2013

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 40 CFR 257

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-305-3
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41663

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate corresponding revisions made by EPA in a final rule published in the Federal Register on 11/28/2016 (81 FR 85732) under the title of Hazardous Waste Generator Improvements Rule (HWGIR). As an authorized state for the hazardous waste program, the proposed changes are made in order to maintain regulatory equivalency with the federal hazardous waste regulations. Similar changes are proposed in other rules under Title R315 in order to incorporate all of the corresponding revisions promulgated under the final HWGIR by EPA on 11/28/2016.

SUMMARY OF THE RULE OR CHANGE: On 04/13/2017, the Waste Management and Radiation Control Board authorized the proposed changes to be published for public review and comment. Proposed changes to Section R315-305-3 reflect those corresponding revisions made by the final HWGIR to 40 CFR 257, as promulgated on 11/28/2016 (81 FR 85732). While many of the changes are required to retain primacy of the hazardous waste program, others provide added clarification or correct textual errors. Specifically, incorporating into Section R315-305-3 and into the other companion rules of Title R315, the revisions promulgated by EPA make significant improvements to the hazardous waste generation requirements by: 1) reorganizing and consolidating the generator requirements for added convenience and clarity, 2) providing added flexibility for generators to manage their hazardous waste in a more cost-effective and equally protective manner, and 3) revising the title of the lowest category of hazardous waste generation

from "conditionally exempt small quantity generator" to "very small quantity generator". The change in the title of the lowest category of hazardous waste generation will result in less confusion on the part of hazardous waste generators regarding the essential requirements for managing hazardous waste produced in very small quantities. Changing the title of this generation category to "very small quantity generator" makes clear that limited rules apply to the generation and management of hazardous waste in very small quantities rather than potentially mislead by using the phrase "conditionally exempt", which may imply that no requirements or rules apply.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 257 and Section 19-6-104 and Section 19-6-105 and Section 19-6-108 and Section 19-6-109

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, state agencies that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **LOCAL GOVERNMENTS:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, local governments that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **SMALL BUSINESSES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, small businesses that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Based on EPA's regulatory impact assessment (September 2016) for the HWGIR, other persons that generate hazardous waste may realize an undetermined portion of the aggregate annual net cost savings of \$3,600 to \$13,100 for all Utah hazardous waste generators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the regulatory impact assessment issued by EPA (September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the regulatory impact assessment issued by EPA

(September 2016, EPA-HQ-RCRA-2012-0121-0313, regulations.gov) for the final HWGIR, EPA estimated that by applying the rule changes, all hazardous waste generators can potentially realize a national aggregate net compliance cost savings from \$722,000 to \$2,630,000, annually. The total number of Utah hazardous waste generators is about 0.5% of the national total. Therefore, given the national total, the annual net cost savings to all Utah hazardous waste generators may range from \$3,600 to \$13,100.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
- ◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/31/2017

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-305. Class IV and VI Landfill Requirements.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, waste from a ~~conditionally exempt~~ very small quantity generator of hazardous waste, as defined by Section ~~[R315-2-5]~~ R315-260-10.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no waste from a ~~conditionally exempt~~ very small quantity generator of hazardous waste, ~~as defined by Section R315-260-10~~ is accepted.

KEY: solid waste management, solid waste disposal

Date of Enactment or Last Substantive Amendment: ~~[April 25, 2013]~~ 2017

Notice of Continuation: February 13, 2013

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108; 19-6-109; 40 CFR 257

Financial Institutions, Administration **R331-10** Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41608

FILED: 05/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of H.B. 40 during the 2017 General Session of the Utah Legislature, persons subject to the jurisdiction of the Department of Financial Institutions under Title 7, Chapter 23, shall keep a record of the information required in Subsection 7-23-201(8)(b) for the time period required by the department by rule. The amendment to this rule provides the time period for retention of those records.

SUMMARY OF THE RULE OR CHANGE: The amendment to the rule provides that the information required in Subsection 7-23-201(8)(b) be retained for two years after termination.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 7-23-201(8)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No impact on the state budget as compliance to the rule affects the financial institutions themselves not the department.

◆ **LOCAL GOVERNMENTS:** The rule does not affect local government. Therefore there are no cost or savings to local government.

◆ **SMALL BUSINESSES:** Persons subject to the jurisdiction of the Department of Financial Institutions under Title 7, Chapter 23, are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact. Persons employing fewer than 50 persons will have added costs of retaining the records. The amount of any cost or savings cannot be estimated as it will vary depending on circumstances.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons subject to the jurisdiction of the Department of Financial Institutions under Title 7, Chapter 23, are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact. Persons will have added costs of retaining the records. The amount of any cost

or savings cannot be estimated as it will vary depending on circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons subject to the jurisdiction of the Department of Financial Institutions under Title 7, Chapter 23, are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact. Persons will have added costs of retaining the records. The amount of any cost or savings cannot be estimated as it will vary depending on circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Persons subject to the jurisdiction of the Department of Financial Institutions under Title 7, Chapter 23, are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact. Persons will have added costs of retaining the records. The amount of any cost or savings cannot be estimated as it will vary depending on circumstances.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

FINANCIAL INSTITUTIONS
ADMINISTRATION
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Edward Leary, Commissioner

R331. Financial Institutions, Administration.
R331-10. Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions.

R331-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of financial institutions under the jurisdiction of the Department of Financial Institutions. Each financial institution may deem it prudent from a business, legal, or other regulatory reason to retain records not identified in this rule.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records where such records have a high degree of usefulness and prescribe the period for which records of each class are retained.

(4) This rule does not prescribe the method of retention other than that the method selected by each financial institution must ensure the records be readily retrieved in an unaltered state.

R331-10-2. Definitions.

Key to Abbreviations:
Figures - Years

R331-10-3. Retention of Records.

(1) CORPORATE AND LEGAL

TABLE 1

Regulation S (domestic and international funds transfer	5
Annual Disclosures Statements/Annual Reports	2
Minute books of directors, executive committee an other records reflecting corporate governance documentation, (e.g., minutes, articles, bylaws, stock records)	10
Superceded policies and procedures	2
Business licenses	1
Service agreements with vendors	2
Litigation documents (after resolution)	2
Affidavits	2
Attachments, garnishments	6

(2) DEPOSITORY PRODUCTS

TABLE 2

Records of checks, drafts and other instruments presented for payment or deposit	6
Deposit records showing relationship of insurance claimants to insurance funds	1
Deposit records disclosing a relationship which might provide the basis for additional insurance	1
Records evidencing compliance with Truth in Savings Act	2
Records of purchases and purchasers of bank checks, drafts, cashier's checks, money orders, and traveler's checks	5
Tax identification numbers of deposit/share/transaction accounts	5
Deposit account trial balance records	5
Each check, deposit, money order issued or payable by bank in excess of \$100	5
Records of debits to customers' account in excess of \$100	5
Records of purchaser of certificate of deposit	5
Records of tax identification number of any person presenting certificate of deposit for payment	5
Deposit slips and credit tickets in excess of \$100	5
Records of receipts of currency in excess of \$10,000 received from persons outside United States	5
Cash letters	1
Account documentation, (e.g., signature card, resolutions, power of attorney, guardianship)	6
Stop payment orders (after release)	1

(3) FIDUCIARY

TABLE 3

Safe deposit documentation, (e.g., access records, contracts)	5
Records relating to municipal securities dealing: copies of filings to any associated person following termination of association	3

Record of all brokers/dealers selected by bank to effect transactions and amount of commission paid or allocated each year 3
 Tax identification number of customers having securities 5
 Records of securities authority from customer 5
 Records of amounts expended and adjustments made to property acquired and held for investment or to verify exercise of qualified stock option, debts written off, amount of loans outstanding with regard to reserves for losses on bad debts of financial institutions for last five taxable years 6
 Fiduciary authority documentation, (e.g., trust agreements, court orders, powers of attorney, directives, authorizations) 6
 Fiduciary account documentation, (e.g., cash and asset records, tax returns) 6
 Fiduciary management committee meeting records 5
 Escrow records (after closing) 6
 Safekeeping records and receipts 2
 Fiduciary account documentation, (e.g., chronological logs of itemized daily records, account records for each customer, order ticket of each buy/sell, record of all brokers used 3

(4) LENDING/LEASING

TABLE 4

Lending and leasing documents after closed, (e.g., credit application, appraisal, credit report, signatory) 6
 Card applications, documentation from date of application 2
 Open or closed-end credit document files excluding card application documentation 6

(5) REGULATORY

TABLE 5

Credit record of transfers of credit more than \$10,000 to outside the United States 5
 Credit record of transfers of funds more than \$10,000 to outside the United States 5
 Checks or records of drafts in excess of \$10,000 drawn on foreign banks 5
 Checks, drafts in excess of \$10,000 from bank, broker or exchange dealer outside United States 5
Utah Bureau of Criminal Identification report or background check (after termination) 2

(6) FINANCIAL

TABLE 6

Escheatment documentation (abandoned deposit accounts, unpaid cashier's checks, unpaid expense checks) 7
 Internal audit reports 5
 Investment confirmations, statements, buy and sell orders 6
 Financial records, (e.g., journals, ledgers, statements, source documents) 7
 Reconcilements, (e.g., General ledger account and supporting documentation) 2
 Notes on contracts payable documentation (after closing) 2

R331-10-4. Exemptions.

The Commissioner of Financial Institutions may make exemptions from any requirement otherwise imposed under this rule and as are consistent with the purposes of this rule.

R331-10-5. Reproduction of Records.

Any institution subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force and effect as the original and shall be admissible into evidence as if it were the original.

R331-10-6. Relationship to other Laws.

This rule will not pre-empt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions

Date of Enactment or Last Substantive Amendment: [October 17, 2000]2017

Notice of Continuation: July 20, 2012

Authorizing, and Implemented or Interpreted Law: 7-1-301(7)

**Governor, Economic Development
 R357-20
 Education Computing Partnerships**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41649

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is required by S.B. 190 from the 2017 General Session which creates a computing education partnership with several entities. The rule is written to fulfill the requirements of this legislation to outline the criteria and process of grants given under the program created in this legislation.

SUMMARY OF THE RULE OR CHANGE: Subsection 63N-12-214(4) requires the STEM Action Center, in consultation with the Utah State Board of Education, make rules for the administration of the grant program and awarding of grants; and define outcome-based measures appropriate to the type of grant awarded under this part of the Utah Code.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63N-12-214

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no cost or savings to the state budget because this rule is part of a program funded by the legislature as part of S.B. 190 from the 2017 General Session.

♦ LOCAL GOVERNMENTS: This rule does not affect local governments directly in any cost or savings but does provide how a local education agency may apply for the grants this rule outlines the process for.

♦ SMALL BUSINESSES: Small businesses will not be affected by this rule because they cannot apply for the grants this rule addresses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no other persons that would be affected by this rule except for education providers that fit the statutory definition of those eligible for applying for grants. This rule outlines the criteria considered for receiving a grant and therefore, does not have a direct cost or savings to affected persons outside of their ability to qualify for a grant. There could be indirect costs incurred if a potential applicant needs to make internal changes to become eligible for the grant. However, no element of this rule is compulsory because the grant and applying for the grant is optional.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with this rule because the rule only outlines the criteria and process for grant eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no impacts on business for the rule because businesses cannot receive this grant.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.

R357-20. Education Computing Partnerships.

R357-20-1. Authority.

(1) Utah Code Annotated 63N-12-214(4) requires the STEM Action Center in consultation with the Utah State Board of Education makes rules for the administration of the grant program and awarding of grants; and to define outcome-based measures

appropriate to the type of grant awarded under this part of the Utah Code.

R357-20-2. Definitions.

(1) This rule adopts the definitions found in Utah Code Section 63N-12-201 et seq.

(2) "USBE" means Utah State Board of Education.

R357-20-3. Grant Requirements and Review Process.

(1) The STEM Action Center, in consultation with the USBE, will determine the maximum amount of the award during any application cycle.

(2) The number of awards in each grant cycle can vary.

(3) The STEM Action Center, in consultation with the USBE, shall determine applicant eligibility criteria during any application cycle and all criteria will be posted in the applications for that grant cycle.

(4) The STEM Action Center, with input from the established review committee and the USBE and in accordance with statute, will determine allowed and disallowed costs during any application period and a list of all allowable and disallowed costs will be included in the application for each grant cycle.

(5) Applicants may request funds for activities that represent a critical component of a full pathway, as long as they indicate where the activities or efforts fit into a pathway, or are envisioned to fit within a pathway.

(6) Hardware and capital infrastructure funding requests may not exceed 10% of the total budget request. Hardware and capital infrastructure shall be defined by the grant agreement received by a successful applicant.

(7) The STEM Action Center Board, with recommendations by the STEM AC staff and in consultation with the USBE, shall have final funding approval rights for all successful applicants.

(8) Eligible applicants shall include Local Education Agencies and individual schools.

(9) Fiscal agents may sub-contract with partners that are approved for funding and they shall use their organization's approved procurement procedures and policies for sub-contract awards.

(10) The type of grants (one year versus multiple years; pilot versus scale and replication) are allowed and can vary with each application cycle and clear indications of what type of grant is and are available will be provided on the STEM Action Center's website or wherever the application is made available.

(11) The competitive application process will include a Request for Grants solicitation, subsequent review and recommended selection for funding by an independent committee and final awards to be made by the STEM Action Center, in consultation with the USBE and with approval of the STEM Action Center Advisory Board. Awards will be administered by the STEM Action Center, using an established Grant Agreement process that has been approved by the State Procurement office.

(12) The review committee, with the organizational representation defined in 63N-12-214, shall consist of four K-16 education representatives (with equal representation from elementary and secondary), two higher education representatives, one USBE representative, one Talent Ready Utah representative and

three industry representatives. The STEM Action Center, in consultation with USBE, shall select the representatives for the review committee.

R357-20-4. Outcome Based Measures.

(1) The measures can be quantitative and/or qualitative in nature

(2) The STEM Action Center, with input from the review committee, shall define the outcome-based measures for each application cycle and make such measures available online or in the application for each grant cycle.

(3) The STEM Action Center shall provide evaluation, monitoring and reporting support for the grants through its third party evaluation partners (Utah Valley University and the University of Utah).

KEY: STEM action center, computing partnerships, pathways
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, Implemented, or Interpreted Law: 63N-12-214

**Health, Family Health and
 Preparedness, Emergency Medical
 Services
 R426-8
 Emergency Medical Services Ground
 Ambulance Rates and Charges**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41617

FILED: 05/11/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Health is required to adjust ambulance maximum rates based on licensed ambulance provider fiscal data. The data is evaluated by the Department to determine if financial trends are causing the licensed ambulance providers to be fiscally viable. Current data was used to amend ambulance rates. Rule R426-8 is amended to update ambulance rates.

SUMMARY OF THE RULE OR CHANGE: Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all EMS agencies statewide. The data collected showed EMS Rates need to be increased at 5.50% so agencies statewide will have closer revenues matching expenses. Rule R426-8 needs to be amended to reflect these ground ambulance transport rate changes. Asset values were deleted since it is not used in current price setting methods. The profitability limit was revised to allow year-to-year deviations, and Medicaid transport numbers will be required to report in order to verify accurate assessment data.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-403

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state budget will not be impacted as this is a user fee.

◆ LOCAL GOVERNMENTS: Local government budgets will not be impacted significantly. The rates listed in the rule are increased 5.50%. The Emergency Medical Services (EMS) agency billings increase by 5.50% which will offset declining collections, wages increases, and the increased equipment costs.

◆ SMALL BUSINESSES: EMS budgets will not be impacted. The ambulance transport rate increase is 5.50% from current ambulance rates to offset declining collections, wage increases, and the increased equipment costs.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other budgets will not be impacted. The ambulance transport rate increase is 5.50% from current ambulance rates to offset declining collections, wage increases, and the increased equipment costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: EMS ambulance providers are allowed to bill the rates listed in the proposed rule. Amendments to this rule will increase patient payments for medical transports. There are no costs to the agency for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The increase in rates will fiscally impact EMS providers who may raise their rates and also impact payors of the increased rates, including insurers, employee benefit funds, and other business who pay or use the services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 EMERGENCY MEDICAL SERVICES
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or mail at PO Box 142004, Salt Lake City, UT 84414-2004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R426. Health, Family Health and Preparedness, Emergency Medical Services.**R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.****R426-8-100. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers in the State of Utah.

R426-8-200. Ground Ambulance Transportation Revenues, Rates, and Charges.

(1) Licensed ground ambulance providers operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers, including subsidies of any type, shall not exceed ~~the greater of eight]ten~~ percent of gross revenue~~], or 14 percent return on average assets].~~

(a) Licensed ground ambulance providers may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(b) A licensed ground ambulance provider may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the Department to be submitted as detailed under R426-8-200(10). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to a hospital or patient receiving facility are as follows:

(a) Ground Ambulance - ~~[\$707.00]~~\$746.00 per transport;

(b) Advanced EMT Ground Ambulance - ~~[\$933.00]~~\$984.00 per transport;

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - ~~[\$1,149.00]~~\$1,212.00 per transport;

(d) Paramedic Ground Ambulance - ~~[\$1,365.00]~~\$1,440.00 per transport;

(e) Ground Ambulance with Paramedic on-board - ~~[\$1,365.00]~~\$1,440.00 per transport if:

(i) a designated Emergency Medical Service dispatch center dispatches a licensed paramedic provider to treat the individual;

(ii) the licensed paramedic provider has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a licensed ground ambulance provider who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider for services provided up to a maximum of ~~[\$286.68]~~\$456.00 per transport.

(4) Mileage rates may be charged at a rate of \$31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon, or gasoline prices exceed \$4.25 per gallon as invoiced.

(5) A surcharge of \$1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(6) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(a) Each patient will be assessed the transportation rate;

(b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(7) A round trip may be billed as two one-way trips. A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

(a) supplies shall be priced fairly and competitively with similar products in the local area;

(b) the individual does not refuse services; and

(c) the licensed ground ambulance personnel assess or treats the individual.

(9) In the event of a temporary escalation of costs, a licensed ground ambulance provider may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(10) The licensed ground ambulance provider shall file with the Department within 90 days of the end of each licensed provider's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.

(12) All licensed ground ambulance providers shall submit a written total number of patient transports for each calendar year to the Department for calculating Medicaid assessments.

(a) A written patient transport number shall be submitted within 90 days after the end of the calendar year.

(b) The submission shall include a written justification when patient transport numbers are not in agreement with patient care reports submitted to the Department as described in R426-7.

Written justifications shall include a description of data reporting errors, and a plan to correct future data submission.

(c) The Department shall use submitted patient transport numbers to calculate ambulance service providers assessments as described in Utah Code Title 26-37a-104(5).

(d) Submitted patient transport numbers and justifications for patient transport numbers not in agreement with patient care report data may be evaluated, corrected, or audited by the Department. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department may proceed in accordance with Utah Code Title 26-8a-504.

KEY: emergency medical services, rates

Date of Enactment or Last Substantive Amendment: [July 1, 2016]2017

Notice of Continuation: November 10, 2015

Authorizing, and Implemented or Interpreted Law: 26-8a

**Health, Disease Control and
Prevention, Laboratory Services
R438-12**

Rule for Law Enforcement Blood Draws

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41568

FILED: 05/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule was to allow individuals other than physicians, registered nurses, or practical nurses to legally draw blood for law enforcement actions. This rule has been incorporated into Rules R426-5 and R426-12 and is no longer needed.

SUMMARY OF THE RULE OR CHANGE: This rule established a procedure for individuals other than physicians, registered nurses, or practical nurses to receive a permit for blood draws by meeting established criteria. This rule has been incorporated into Rules R426-5 and R426-12 and is no longer needed. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-1-30(2)(s) and Subsection 41-6-44.10(5)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--This rule has been incorporated into Rule R426-5. There will be no cost saving from the repeal.

♦ **LOCAL GOVERNMENTS:** None--This rule has been incorporated into Rule R426-5. There will be no cost saving from the repeal.

♦ **SMALL BUSINESSES:** None--This rule has been incorporated into Rule R426-5. There will be no cost saving from the repeal.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule has been incorporated into Rule R426-5. There will be no cost saving from the repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule has been incorporated into Rule R426-5. There will be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed because the authorization and requirements set out in this rule have been adopted through Emergency Management Rule R426-5. There is no impact to business because Rule R426-5 has adopted the requirements set out in this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
DISEASE CONTROL AND PREVENTION,
LABORATORY SERVICES
4431 S 2700 W
TAYLORSVILLE, UT 84119
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov or mail at PO Box 142109, Salt Lake City, UT 84114-2109

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R438. Health, Disease Control and Prevention, Laboratory Services.

~~**[R438-12. Rule for Law Enforcement Blood Draws.**~~

~~**R438-12-1. Definitions.**~~

~~(1) "Director" means the Executive Director of the Department of Health.~~

~~(2) "Department" means the Department of Health.~~

~~**R438-12-2. Authorized Individual - Qualifications.**~~

~~Pursuant to section 26-1-30(2)(s), individuals other than physicians, registered nurses, or practical nurses shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcoholic or drug content when requested to do so by a peace officer:~~

~~_____ (1) training in blood withdrawal procedures obtained as a defined part of a successfully completed college or university course taken for credit, or~~

~~_____ (2) training in blood withdrawal procedures obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations, or~~

~~_____ (3) training of no less than three weeks duration in blood withdrawal procedures under the guidance of a licensed physician.~~

R438-12-3. Permits for Authorized Individuals.

~~_____ (1) Pursuant to section 26-1-30(2)(s), the Department shall issue permits to withdraw blood for the purpose of determining the alcoholic or drug content therein, when requested by a peace officer, to qualified applicants, as determined by the Department. The permit shall be of a size suitable for framing and a wallet-sized permit card shall be issued with the permit.~~

~~_____ (2) Application to obtain a permit shall be made to the Director, Division of Epidemiology and Laboratory Services on forms provided by the Department.~~

~~_____ (3) The permit shall be prominently displayed in the facility where the permit holder is employed. When the permit holder is requested to withdraw blood for the above stated purpose at a location other than the facility indicated above, he must have a valid permit card on his person.~~

~~_____ (4) The effective date of a permit shall be the date the application is approved by the Department, which date shall appear on the permit and on the wallet-sized permit card. Permits shall be valid for a three year period on a calendar year basis. The date the permit expires shall appear on the permit and on the wallet-sized permit card. Permits shall be subject to termination or revocation pursuant to R438-12-4.~~

~~_____ (5) Application to renew permits shall be made to the Director, Division of Epidemiology and Laboratory Services before the end of each three year permit period. Such application shall be made on forms provided by the Department. The permit holder shall either certify that he has been engaged in performing blood withdrawal procedures during the current permit period or submit a certificate signed by a physician attesting to his competence to perform blood withdrawal procedures.~~

~~_____ (6) Permit holders must notify the Director, Division of Epidemiology and Laboratory Services within 15 days of a change in name or mailing address. Permits or permit cards that are destroyed or lost may be replaced upon written request from the permit holder.~~

R438-12-4. Cause for Permit Termination or Revocation.

~~_____ Violation of this rule violates Section 26-23-6 and is cause to cancel any permit issued under this rule.~~

~~_____ Permits shall be subject to termination or revocation under any one of the following:~~

~~_____ 1. The permit holder has made any misrepresentation of a material fact in his application, or any other communication to the Department or its representatives, which misrepresentation was material to the eligibility of the permit holder.~~

~~_____ 2. The permit holder is not qualified under R438-12-2 to hold a permit.~~

~~_____ 3. The permit holder after having received a permit has been convicted of a felony or of a misdemeanor which misdemeanor involves moral turpitude.~~

~~_____ 4. The permit holder does not comply with the display or possession requirements stated in R438-12-3.C.~~

R438-12-5. Published List of Authorized Individuals.

~~_____ The Department shall publish annually, a list of individuals authorized to withdraw blood for determination of its alcoholic or drug content, when requested to do so by a peace officer. This list shall include the individual's name, mailing address, and permit number. The list shall be made available to all state and local law enforcement agencies, all local health departments, and any other person or agency requesting the information. The Department may publish amended lists when deemed necessary.~~

KEY: sobriety tests

Date of Enactment or Last Substantive Amendment: January 6, 2010

Notice of Continuation: January 20, 2012

Authorizing, and Implemented or Interpreted Law: 41-6a-523; 26-1-30(2)(s)]

Human Services, Substance Abuse
and Mental Health
R523-5
Adult Peer Support Specialist Training
and Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41607

FILED: 05/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change attempts to combine all types of peer support specialist training and certification requirements into one document.

SUMMARY OF THE RULE OR CHANGE: All references to just "Adult" Peer Support Specialists are changed to reflect all types of Peer Support Specialists that are certified by the Division of Substance Abuse and Mental Health (DSAMH); grammatical changes are implemented; a definition of "Youth-In-Transition" is added; curriculum changes remove "Strengthening the peer specialist's recovery", and "assist with physical health and wellness"; "Population Specific Guidelines" is added; and "Curriculum Requirements for Youth-in-Transition Training Programs" is added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-103(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule change will impact procedures by simply explicitly allowing adult peer support services to be delivered to Youth-In-Transition. This service is already allowable within current funding and will not impact budgets.

◆ **LOCAL GOVERNMENTS:** This rule will add an additional Youth-In-Transition endorsement for adult peer support services specialists that requires an additional eight hours of training above the standard time needed to receive a peer support specialist certification. Though this endorsement is voluntary, those seeking the endorsement who are working for a local authority would need to take 8 hours off from work to attend the training, and may have to pay up to \$100 to receive the training. Local governments that reimburse or provide financial support for their employees seeking the endorsement could pay up to 8 hours of the employees' salaries and up to \$100 for the training. DSAMH currently has no contracts with training providers that would charge a fee for this training, but there is a potential that this arrangement will not always exist and training fees could be requested.

◆ **SMALL BUSINESSES:** It is anticipated that no small businesses will participate in the certification or endorsement described in this rule. This rule mostly affects local governments, employees of local governments, businesses contracted with local governments to provide substance use and/or mental health treatment services (none of which are small businesses at this time) and private citizens that are proactively seeking work within the public substance use and mental health treatment field and are covering personal cost to receive the certification and endorsement to place on a resume.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will add an additional Youth-In-Transition endorsement for adult peer support services specialists that requires an additional eight hours of training above the standard time needed to receive a peer support specialist certification. Though this endorsement is voluntary, those seeking the endorsement as private citizens that are proactively seeking work within the public substance use and mental health treatment field and are covering personal cost to receive the certification and endorsement to place on a resume, would incur the following costs: eight hours of their personal time, and if they are working for an employer who does not reimburse for this training, they would lose eight hours of their weekly salary or eight hours of their PTO or other leave; and may have to pay up to \$100 to receive the training. DSAMH currently has no contracts with training providers that would charge a fee for this training, but there is a potential that this arrangement will not always exist and training fees could be requested.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are associated with this rule change other than those that already exist from initial establishment of the rule. A Youth-In-Transition endorsement is not required to be a peer support specialist with adults.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may require businesses to lose eight hours of productivity from employees seeking a Youth-In-Transition endorsement. Additionally, businesses that reimburse or provide financial support for their employees seeking the endorsement could pay up to 8 hours of the employees' salaries and up to \$100 for the training. DSAMH currently has no contracts with training providers that would charge a fee for this training, but there is a potential that this arrangement will not always exist and training fees could be requested.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov
◆ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-5. ~~[Adult]~~Peer Support Specialist Training and Certification.

R523-5-1. Purpose, Authority and Intent.

(1) Purpose. This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an ~~[Adult]~~Peer Support Specialist and establishes guidelines for population specific peer support services.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health, hereinafter referred to as "Division", as authorized by Section ~~[62A-15-402]~~[62A-15-103(h)].

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists and provide services based on service guidelines.

R523-5-2. Definitions.

(1) "[~~Adult~~]Peer Support Specialist (PSS)" is an individual who has successfully completed an approved [~~Adult~~] Peer Support Specialist Training Program and for ongoing certification has met the requirements outlined in paragraph R523-5-6.

(2) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(3) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as [~~an "Adult"]a "Peer Support Specialist Training Program".~~

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

(8) "Recovery" is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(9) "Youth-In-Transition" means young people who are between the ages of 16 and 25, or those outside of this age range for which peer support services have been deemed developmentally and socially appropriate by a licensed mental health therapist.

R523-5-3. Certification Requirements for Peer Support Specialist Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-5-5 for a PSS.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-5-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The PSS Training Program shall also allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the PSS Training Program. This process will:

(a) Develop and publish an application to be a PSS.

(b) Solicit input from stakeholders, [~~Peer Support Specialists~~]PSS's and other individuals on the review process.

(c) Establish further criteria for acceptance into the PSS program as needed.

R523-5-5. Curriculum Requirements for Adult Peer Support Specialist Training Programs.

(1) This curriculum shall provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the PSS's lived experience and recovery in order to assist in the identified client's strengths working towards recovery:

(a) Etiology of mental illness and substance use disorders;

(b) The stages of recovery from mental illness and substance use disorders;

(c) The relapse prevention process;

(d) Combating negative self-talk;

(e) The Role of [~~Peer Support~~]peer support in the [~~Recovery Process and Using Your Recovery Story as a Recovery Tool~~]recovery process and using your recovery story as a recovery tool;

(f) Dynamics of [~~Change~~]change;

(g) [~~Strengthening the Peer Specialist's recovery~~]Ethics of peer support;

(h) [~~Ethics of Peer Support~~]Professional relationships, boundaries and limits;

(i) [~~Professional relationships, boundaries and limits~~]Scope of peer support;

(j) [~~Scope of Peer Support~~]Cultural competence: self-awareness - cultural identity;

(k) [~~Cultural Competence: Self-Awareness -- Cultural Identity~~]Stigma and labeling;

(l) [~~Stigma and Labeling~~]Community resources to support individuals in recovery;

(m) [~~Community resources to support individuals in recovery~~]Assisting individuals in accomplishing recovery goals;

(n) [~~Assisting individuals in Accomplishing Recovery Goals~~]Coach, mentor, and role model recovery;

(o) [~~Coach, Mentor, and Role Model recovery~~]Assist in identification of natural, formal and informal supports;

(p) [~~Assist in identification of natural, formal and informal supports~~]Stress management techniques;

(q) ~~[Stress Management Techniques]~~ Assist individuals in reaching educational and vocational goals;

(r) ~~[Assisting individuals in reaching educational and vocational goals;]~~ Crisis prevention; and

(s) ~~[Crisis prevention; and]~~ Assist with physical health and wellness.

~~[(t) Assist with physical health and wellness.]~~

(2) The curriculum ~~[must be strength based and]~~ shall include:

(a) Active listening and communication skills; and

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-5-6. Requirements to Become ~~[an Adult Peer Support Specialist]~~ a PSS.

(1) Be an individual who participated in substance use disorder or mental health treatment services who is now in sustained recovery, or

(2) Be an individual in recovery from substance use or mental health disorders through means other than treatment services who is now in sustained recovery.

(3) Be at least 18 years of age.

(4) Complete the application process with the Division.

(5) Pass the qualification exam with score of 70% or above.

(6) Have attended and successfully completed a Division approved ~~[Peer Support Specialist]~~ PSS training program and have a valid certificate from that training.

R523-5-7. Requirements to Remain Qualified as ~~[an Adult Peer Support Specialist]~~ a PSS.

(1) Complete at least twenty (20) hours of continuing education every two (2) years including two (2) hours of ethics training, six (6) hours pertaining specifically to ~~[Peer Support Services]~~ peer support services, one (1) hour of suicide prevention training and eleven (11) hours of general mental health and/or substance use disorder training.

(2) Each ~~[Adult Peer Support Specialist]~~ PSS shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The ~~[Adult Peer Support Specialist]~~ PSS shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(a) At a minimum, the documentation shall contain the following:

(i) Date of the course;

(ii) Name of the course provider;

(iii) Name of the instructor;

(iv) Course title;

(v) Number of hours of continuing education credit; and

(vi) Course objectives.

R523-5-8. Population Specific Guidelines.

(1) Typically a PSS works with individuals age 18 and older.

(2) A PSS may work with Youth-In-Transition if the PSS has completed Youth-In-Transition training, in addition to any other PSS training, of no less than 8 hours, and receives a Youth-In-Transition endorsement from the Division on their PSS certification.

R523-5-9. Curriculum Requirements for Youth-In-Transition Training Programs.

(1) This curriculum shall provide at least eight (8) hours of instruction for the Youth-In-Transition endorsement of PSS certification. The curriculum, which shall be approved by the Division, shall include, but not be limited to, the following components as they relate to Youth-In-Transition:

(a) Meaning of Youth-In-Transition and specific challenges related to this population;

(b) Preferred practice models and tools;

(c) Population specific material regarding: common challenges, barriers, resources, relationship issues, recovery, housing, employment, legal, crisis, cultural and self-care.

(d) Professional relationships, boundaries and limits.

(2) The curriculum must be strength based and shall include:

(a) Active listening and communication skills; and

(b) Basic motivational interviewing skills.

(3) The curriculum shall include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and shall include case studies, role plays and experiential learning specific to Youth-In-Transition.

(4) The Division, PSS, mental health and substance use disorder professionals and advocate organizations shall regularly review and make evidence-based updates to the curriculum at least every two years. Final determination on curriculum changes or updates shall be made by the Division.

KEY: peer support specialists, PSS program, certification of programs, substance use disorder

Date of Enactment or Last Substantive Amendment: ~~[October 11, 2016]~~ 2017

Authorizing, and Implemented or Interpreted Law: 62A-15-402

Judicial Performance Evaluation
Commission, Administration
R597-2-2
Disclosure, Recusal, and
Disqualification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41620

FILED: 05/12/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change updates the rule with respect to statutory changes made to Subsection 78A-12-203(5) during

the 2017 General Session of the Utah Legislature under S.B. 193.

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds new statutory provisions to the rule in order to create one location where all requirements about disclosure, recusal, and disqualification are placed. Thus, it restates statutory language in the appropriate places in the rule. Specifically, it: 1) includes conflict of interest as a requirement for recusal, 2) declares disclosures as a protected record, and 3) states a limitation on disqualification pursuant to Subsection 78A-12-203(5)(e)(i).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 to 78A-12-207

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change has no impact on the state budget because it only changes the conditions under which commissioners disclose, recuse, and disqualify for deliberations and voting on judicial retention recommendations. It does not change the number of judges evaluated, which is a central factor in determining the cost of evaluations.

◆ **LOCAL GOVERNMENTS:** The Judicial Performance Evaluation Commission has no dealings with local government, so there is no cost or savings to those entities as a result of this change.

◆ **SMALL BUSINESSES:** The Commission has no authority with respect to small businesses and no dealings with small businesses; consequently, there is no impact on such entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The affected persons are the individual, volunteer commissioners who are required by statute to make recommendations about whether judges should be recommended to voters for retention. There is no cost savings to them because there is no cost or savings associated with the limitations placed upon them for disclosure, recusal, and disqualification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs to commissioners for compliance with this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Jennifer Yim, or by Internet E-mail at jyim@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: John Ashton, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-2. Administration of the Commission.

R597-2-2. Disclosure, Recusal, and Disqualification.

(1) Disclosure.

(a) Commissioners shall make disclosures at the monthly commission meeting prior to the first scheduled meeting at which the retention evaluation reports for a given class of judges will be discussed or, in any event, no later than the beginning of the meeting at which a particular judge's evaluation is considered.

(b) Each commissioner shall disclose to the commission any professional or personal relationship or conflict of interest with a judge that may affect an unbiased evaluation of the judge.

(c) Relationships that may affect an unbiased evaluation of the judge include any contact or association that might influence a commissioner's ability to fairly and reasonably evaluate the performance of any judge or to assess that judge without bias or prejudice, including but not limited to:

(i) family relationships to a state, municipal, or county judge within the third degree (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(ii) any business relationship between the commissioner and the judge.

(iii) any personal litigation directly or indirectly involving the judge and the commissioner, the commissioner's family or the commissioner's business;

(d) A commissioner exhibits bias or prejudice when the commissioner is predisposed to decide a cause or an issue in a way that does not leave the commissioner's mind open to exercising the commissioner's duties impartially in a particular case.

(e) Disclosures made with respect to a judge subject to evaluation constitute a protected record pursuant to Subsection 78A-12-203(5)(e).

(2) Recusal.

(a) As used in this rule, recusal is a voluntary act of self-disqualification by a commissioner.

(b) Recusal encompasses exclusion both from participating in the commission's evaluation of judge and from voting on whether to recommend the judge for retention.

(c) After making a disclosure, a commissioner may voluntarily recuse if the commissioner believes the relationship with the judge will affect an unbiased evaluation of the judge.

(3) Disqualification.

(a) A commissioner may move to vote on the disqualification of another commissioner if:

(i) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or

(ii) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.

(b) A commissioner may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, pursuant to Subsection 78A-12-203(5)(c)(i).

~~(b)~~(c) A motion to disqualify must be seconded in order to proceed.

~~(e)~~(d) During the discussion concerning possible disqualification, any commissioner may raise any facts concerning another commissioner's ability to fairly and reasonably evaluate the performance of any judge without bias or prejudice.

~~(b)~~(e) A two-thirds vote of those present is required to disqualify any commissioner.

~~(e)~~(f) Disqualification encompasses exclusion both from participating in the commission's evaluation of a judge and from voting on whether to recommend the judge for retention.

KEY: internal operating procedures, reporting improper attempts to influence, conflicts of interest, confidentiality

Date of Enactment or Last Substantive Amendment: [~~October 22, 2010~~2017

Notice of Continuation: April 13, 2015

Authorizing, and Implemented or Interpreted Law: 78A-12-201 through 78A-12-206

**Judicial Performance Evaluation
Commission, Administration**

R597-3-1

Evaluation Cycles

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41623

FILED: 05/12/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change updates the evaluation cycles for judicial performance evaluation to make them consistent with the judicial retention election filing deadlines changed by the Utah Legislature during the 2017 General Session under H.B. 191.

SUMMARY OF THE RULE OR CHANGE: The Legislature changed the judicial filing deadlines from April 15th of a general election year to July 15th of a general election year. The proposed rule amendment lengthens the evaluation cycles for judges an additional three months, consistent with the legislative filing deadline changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-207

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change has no impact on the state budget because it only changes the length of evaluation cycles for judicial performance surveys. It does not change the number of judges evaluated, which is a central factor in determining the cost of the evaluations.

◆ **LOCAL GOVERNMENTS:** The Judicial Performance Evaluation Commission has no dealings with local government, so there is no cost or savings to those entities as a result of this change.

◆ **SMALL BUSINESSES:** The Commission has no authority with respect to small businesses and no dealings with small businesses; consequently there is no impact on such entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only affected persons are judges who will receive a longer evaluation period for judicial performance evaluations. There is no cost or savings to them because the change only prescribes the period during which the Commission will collect performance data about them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to judges who will receive a lengthier performance evaluation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennifer Yim, or by Internet E-mail at jjim@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: John Ashton, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends ~~[2 1/2 years later,] on [June]September 30th~~ of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends ~~[two years later,] on [June]September 30th~~ of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends ~~[2 1/2 years later,] on [June]September 30th~~ of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends ~~[four years later,] on [June]September 30th~~ of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends ~~[two years later,] on [June]September 30th~~ of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [February 17], 2017

Notice of Continuation: February 17, 2014

Authorizing, and Implemented or Interpreted Law: 78A-12

**Judicial Performance Evaluation
Commission, Administration
R597-3-3
Courtroom Observation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41624

FILED: 05/12/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to outline a program change to Judicial Performance Evaluation Commission's (JPEC) Courtroom Observation Program.

SUMMARY OF THE RULE OR CHANGE: This amendment states that although volunteers, courtroom observers may be

eligible to receive compensation from JPEC in exchange for specified amounts of additional courtroom observation work.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-207

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These costs, estimated at no more than \$5,000 per year, will be covered through existing budget allocations to JPEC.

◆ **LOCAL GOVERNMENTS:** The Commission has no dealings with local government, so there is no cost or savings to those entities as a result of this change.

◆ **SMALL BUSINESSES:** The Commission has no authority with respect to small businesses and no dealings with small businesses; consequently, there is no impact on such entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The affected persons are individual courtroom observation volunteers who may be eligible to receive limited compensation for the completion of specified courtroom observation work.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons is the time taken to complete the specified courtroom observation work assigned to them and document the completion before payment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennifer Yim, or by Internet E-mail at jjim@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: John Ashton, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), *supra*.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(iii) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseflow efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [February 17], 2017

Notice of Continuation: February 17, 2014

Authorizing, and Implemented or Interpreted Law: 78A-12

Judicial Performance Evaluation Commission, Administration

R597-3-5

Public Comments

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41625

FILED: 05/12/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change updates the public comment filing deadlines for judicial performance evaluation to make them consistent with the judicial retention election filing deadlines changed by the Utah Legislature during the 2017 General Session under H.B. 191.

SUMMARY OF THE RULE OR CHANGE: The Legislature changed the judicial filing deadlines from April 15th of a general election year to July 15th of a general election year. The proposed rule amendment changes the public comment period for persons desiring to comment on the performance

of judges. It shifts the end date of the public comment period forward an additional three months, consistent with legislative filing deadline changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-207

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change has no impact on the state budget because it only changes deadlines for when comments must be submitted and broadens the scope of what kind of comments may be submitted. It does not change the number of judges evaluated, which is a central factor in determining the cost of the evaluations.

◆ **LOCAL GOVERNMENTS:** The Judicial Performance Evaluation Commission has no dealings with local government, so there is no cost or savings to those entities as a result of this change.

◆ **SMALL BUSINESSES:** The Commission has no authority with respect to small businesses and no dealings with small businesses; consequently there is no impact on such entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only affected persons are the individual members of the public who may choose to submit comments about a judge. There is no cost or savings to them because all they are doing is submitting comments, which has no cost or savings associated with it.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to members of the public if they choose to submit a comment about a judge.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

JUDICIAL PERFORMANCE EVALUATION
COMMISSION

ADMINISTRATION

ROOM B-330 SENATE BUILDING

420 N STATE ST

SALT LAKE CITY, UT 84114

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennifer Yim, or by Internet E-mail at jjim@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: John Ashton, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than ~~[December]~~March 1st of the year ~~[preceding the election]~~in which the judge's name appears on the ballot.

(3) Comments received after ~~[December]~~March 1st of the year ~~[preceding the election]~~in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [February 17], 2017

Notice of Continuation: February 17, 2014

Authorizing, and Implemented or Interpreted Law: 78A-12

**Natural Resources, Water Rights
R655-2**

**Procedure for Administrative
Proceedings Before the Division of
Water Rights Commenced Prior to
January 1, 1988**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41590

FILED: 05/05/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule used to provide direction for administrative proceedings commenced prior to January 1, 1988 and is no longer in use nor applicable to current rule requirements.

SUMMARY OF THE RULE OR CHANGE: This rule is no longer in use nor applicable to current rule requirements. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-203 and Title 73, Chapter 3

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No cost is involved. Clarification for procedures does not require a dollar figure.

◆ LOCAL GOVERNMENTS: No cost is involved. Clarification for procedures does not require a dollar figure.

◆ SMALL BUSINESSES: No cost is involved. Clarification for procedures does not require a dollar figure.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost is involved. Clarification for procedures does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is involved. Clarification for procedures does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact. Clarification for procedures does not require a dollar figure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.

~~[R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.~~

~~R655-2-1. General Provisions.~~

~~1.1 Procedure Governed. These rules shall govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings commenced prior to January 1, 1988. Adjudicative proceedings commenced on and after January 1, 1988, are governed by R655-6 of these rules.~~

~~1.2 Definitions:~~

~~(a) "Division" means Division of Water Rights.~~

~~(b) "State Engineer" is the Administrator of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.~~

~~(c) "Staff" means the Division of Water Rights staff.~~

~~(d) "Hearing officer" is the individual conducting a hearing which is provided for in these rules and will be either the State Engineer or a designated member of his staff.~~

~~(e) "Application" means any application which has been filed pursuant to Title 73, Chapters 1 through 3, and shall include -- but not be limited to -- applications to appropriate, change applications, requests for extension of time, exchange applications, segregation applications, applications to resume the use of water, and applications for stream channel changes. The rules governing the filing and perfecting of these documents are specified in said Chapters, and the following rules govern only the hearing procedures for those applications which have been properly filed and have proceeded to the point that they are ready for hearing.~~

~~(f) "Applicant" is a person applying for an application.~~

~~(g) "Petitioner" is any person, other than the applicant, seeking relief from the State Engineer where the relief sought falls within the jurisdiction of the State Engineer's statutory duties and responsibilities.~~

~~(h) "Protestant" means a person who protests an application before the State Engineer.~~

~~(i) "Person" means any governmental subdivision or agency, individual, corporation, partnership or association.~~

~~(j) "Proceeding" shall include -- but not be limited to -- hearings, petitions, orders to show cause, and formal investigations made by the State Engineer.~~

~~(k) "Party" means each person named or admitted as a party in a proceedings before the State Engineer.~~

~~(l) "Water user" means any person using water and subject to the regulatory authority of the State Engineer.~~

~~1.3 Liberal Construction. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the State Engineer.~~

~~1.4 Deviation from Rules. During emergency situations where it is essential to restore or establish water for the preservation of life or critical crops, the State Engineer may permit a deviation from these rules except where precluded by statute.~~

~~1.5 Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor State holiday. For good cause shown, the State Engineer may extend or waive any time limit prescribed or allowed by these rules.~~

~~1.6 Notice. The State Engineer shall give written notice of hearings to all persons who have become parties to a proceeding, by regular mail at least ten days prior to the hearing.~~

R655-2-2. Parties.

~~2.1 Generally. Parties to a proceeding before the State Engineer shall be:~~

~~(a) Persons who have a statutory right to be a party;~~

~~(b) Persons who may become a party when they have established to the satisfaction of the State Engineer that they have a~~

~~substantial interest in the subject matter of the proceeding and that their intervention will not unduly broaden the issues.~~

~~2.2 Rights of Parties. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.~~

R655-2-3. Intervention.

~~3.1 Order Granting Leave to Intervene Required. Persons desiring to intervene in a proceeding shall obtain permission from the State Engineer granting leave to intervene before being allowed to participate. Permission shall be requested by means of a petition in the following manner, provided that for good cause shown leave to intervene may be requested orally at the hearing.~~

~~(a) Content of Petition. Petitions for leave to intervene must be in writing and must identify the proceeding by water right number, if known. The petition must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding and the manner in which the proceeding will affect his interests.~~

~~(b) When Petition Must be Filed. A petition for leave to intervene must be filed with the State Engineer at least five days prior to the date set for the hearing.~~

~~(c) Granting of Petition. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding and does not unduly broaden the issues, the State Engineer may grant leave to intervene.~~

R655-2-4. Pleadings.

~~4.1 Pleadings before the State Engineer for administrative hearings shall consist of:~~

~~(a) Applications.~~

~~For purposes of a hearing before the State Engineer, applications which have been filed with the State Engineer in accordance with the provisions of Title 73, Chapters 1 through 3, and which have been protested, shall be deemed pleadings for purposes of the administrative hearing procedure provided for in these rules.~~

~~(b) Formal Protests.~~

~~Formal protests shall consist of those protests which have been filed with the State Engineer in objection to the granting of an application. The provisions for filing formal protests and the time within which they must be filed is provided in Section 73-3-7. The formal protest shall set forth clearly and concisely the grounds for the protest. Two or more grounds of protest concerning the same application may be included in one formal protest, but should be numbered and stated separately. Two or more protestants may join in one formal protest if their respective protests are against the same application and deal substantially with the same issue.~~

~~(c) Informal Protests.~~

~~Informal protests may be made by a letter or other writing, and no particular form is required. The writing must clearly state the matters complained of and must identify the party complained against and must be signed by the protestant or his attorney and show the address of protestant or his attorney.~~

~~Informal protests may be handled by the State Engineer by informal conference, correspondence, or otherwise with the parties affected in an endeavor to bring about adjustment of the protest without a formal hearing.~~

~~(d) Orders to Show Cause or Other Notice.
Pleadings before the State Engineer shall also include Orders to Show Cause or other notices used by the State Engineer to initiate a hearing on his own motion.~~

~~(e) Petitions.
All pleadings other than applications requesting affirmative relief, including requests to intervene or for re-hearing, shall be entitled "petitions". A petition shall set forth clearly and concisely the basis and grounds for the petition and the relief requested.~~

~~(f) Title and Content of Pleadings.
Applications and other similar documents must only be filed upon the forms provided by the State Engineer. All other pleadings filed with the State Engineer should include the water right number as it appears in the State Engineer's office, if the water right which is the subject matter of the pleading has been assigned a number by the State Engineer. The pleading should also identify the name and address of the water user against whom the protest is directed.~~

~~If the water right involved in the pleading has not been assigned a water right number by the State Engineer, then the protestant or petitioner should identify the water right involved by other means -- the name and address of the water user, the water source, nature and location of the use, and other information as will aid in the identification of the water right.~~

~~Protests and petitions should be filed on legal-sized paper, type-written and double-spaced, but may be submitted in hand-written form. Protests and petitions should identify the water right by number and should contain a clear, concise statement of the matter relied upon as the basis for the pleading, together with an appropriate request for relief when relief is sought.~~

~~(g) Signing of Pleadings.
Pleadings shall be signed by the party or by the party's attorney or other authorized representative, and shall show the signer's address. The signature shall be deemed to be a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, the statements are true.~~

~~(h) Amendments to Pleadings.
The State Engineer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.~~

R655-2-5. Filing and Service.

~~5.1 Filing of Pleadings. Applications and protests shall be filed in accordance with the applicable statutory provisions. Petitions shall be filed with the State Engineer as specified in these rules.~~

~~5.2 Service. The State Engineer, upon receipt of a protest or petition, shall mail copies to those parties against whom relief is sought.~~

~~5.3 Service on Attorney. When any party has appeared by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party he represents.~~

~~5.4 Time for Filing. Protests and other documents which are governed by statute shall be filed in accordance with the time~~

~~specified in the statute. Other pleadings which are provided for in these rules shall be filed within the time specified.~~

R655-2-6. Appearances and Representation.

~~6.1 Taking Appearances. Parties shall enter their appearances at the beginning of a hearing or at a time designated by the State Engineer by giving their names and addresses and stating their positions or interests in the proceeding.~~

~~6.2 Representation of Parties.
(a) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.~~

~~(b) Any party may be represented by an attorney at law.~~

R655-2-7. Pre-Hearing Procedure.

~~The State Engineer may, upon written notice to all parties or record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement.~~

R655-2-8. Hearings.

~~8.1 Initiation of Formal Hearing in Contested Cases.
(a) By the State Engineer. The State Engineer may initiate a formal hearing upon his own motion to determine matters within his authority. If the hearing is directed toward an applicant or water user, the State Engineer shall serve on that person an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the person is charged, or the issues to be determined at the hearing. The notice or order shall specify the statutes and rules involved in the proceeding.~~

~~(b) By Other Persons. A formal hearing may be initiated by other persons by filing with the State Engineer a formal protest or petition. Upon the filing of a formal protest or petition which is directed toward an applicant or water user, the State Engineer shall serve a copy of the formal protest or petition upon the applicant or water user, except as provided in the following sub-paragraphs (c) and (d) of this rule.~~

~~(c) Dismissal of Formal Protest or Petition. If it appears to the State Engineer upon the filing of a formal protest or petition that the matters alleged in the formal protest or petition are not within his jurisdiction or regulatory powers, the State Engineer in his discretion need not serve a copy of the formal protest or petition on the applicant or water user, but shall serve a notice on the protestant or petitioner which shall state the reasons why the formal protest or petition has not been served, and shall set a time at which the protestant or petitioner may appear before the State Engineer or submit a written memorandum setting forth reasons why the State Engineer has jurisdiction and authority to resolve the matter. Following appearance or submission of memorandum, the State Engineer may proceed to serve the formal protest or petition on the applicant or water user, or may -- upon his own motion -- dismiss the formal protest or petition if he concludes that he does not have jurisdiction over or the authority to resolve the matter. The State~~

Engineer shall mail a written notice to the protestant or petitioner of his action, and, if he dismisses the formal protest or petition, the notice shall contain a statement of the reasons for his decision. If the State Engineer proceeds to serve the protestant or petitioner, no action taken pursuant to this paragraph shall preclude the applicant or water user from challenging the jurisdiction and authority of the State Engineer over the matter in issue.

(d) ~~Protest or Petition Insufficient.~~ If a formal protest or petition filed with the State Engineer does not contain sufficient information in the opinion of the State Engineer to adequately apprise the applicant or water user of the matters which are complained of and to enable the applicant or water user to prepare his defense, the State Engineer may require the protestant or petitioner to furnish additional information, or to file a new protest or petition before the formal protest or petition is served on the applicant or water user.

8.2 ~~Setting of Hearing.~~ Upon the filing of a formal protest or petition which does not require a responsive pleading, or when the State Engineer initiates a proceeding upon his own motion and no responsive pleading is required, the State Engineer shall set a time and place for hearing. No hearing shall take place within the ten-day period immediately following the filing of the formal protest or petition unless the parties consent to a shorter period of time. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

8.3 ~~Failure to Appear.~~ When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the State Engineer may dismiss or continue the matter, or may proceed to hear the matter in the absence of the defaulting party.

8.4 ~~Continuance.~~ If application is made to the State Engineer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the State Engineer may grant a continuance of the hearing.

8.5 ~~Hearings.~~ All hearings held by the State Engineer shall be open to the public.

8.6 ~~Testimony.~~ At a hearing, the State Engineer or his hearing officer shall accept oral or written testimony from any party. Further, the hearing officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings before the State Engineer may be under oath.

8.7 ~~Order of Presentation of Evidence.~~ Unless otherwise directed by the State Engineer at a hearing, the presentation of evidence shall be as follows:

(a) ~~Upon applications and other documents filed in connection with the appropriation and use of water:~~

1. applicant;
2. protestants.

(b) ~~Upon petitions or objections concerning the exercise of a water right:~~

1. protestants;
2. water user whose use is being protested.

(c) ~~Upon complaints by the State Engineer and orders to show cause --~~

1. Division of Water Rights staff;
2. party against whom the action is being taken.

~~During any of the hearings specified above, a party may offer rebuttal evidence.~~

8.8 ~~Rules of Evidence.~~ A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in a judicial proceeding. The hearing officer shall admit all relevant and material evidence, except evidence which is unduly repetitious, even though evidence may be inadmissible under rules of evidence in judicial proceedings. The weight to be given to evidence shall be determined by the State Engineer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

8.9 ~~Documentary Evidence.~~ Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

8.10 ~~Official Notice.~~ The State Engineer may take official notice of the following matters:

(a) ~~Rules, regulations, official reports, decisions and orders of the State Engineer and any other regulatory agency, state or federal;~~

(b) ~~Official documents introduced into the record by proper reference; provided, however, that documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;~~

(c) ~~Matters of common knowledge and generally recognized technical or scientific facts within the State Engineer's specialized knowledge and of any factual information which he may have gathered from a field inspection of the water sources or area involved in the proceeding.~~

8.11 ~~Oral Argument and Memoranda.~~ Upon the conclusion of the taking of evidence, the State Engineer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the State Engineer.

8.12 ~~Record of Hearing.~~ A record of any hearing may be made at the option of either the State Engineer or any party to the hearing. However, should a party desire a record of any hearing, that party must notify the State Engineer within a reasonable time prior to the time the hearing begins. When a record is made by the State Engineer, it shall be done by means of an automatic recording device. If the tape of the hearing is later transcribed, the transcript will be made available for inspection by any party. The State Engineer will make a transcription only if he deems it advisable and necessary to do so.

If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the State Engineer free of charge. This transcript shall be available at the State Engineer's office to any party to the hearing.

R655-2-9. Decisions and Orders.

9.1 ~~Report and Order.~~ After the State Engineer has reached a final decision upon any proceeding, he shall make and enter a decision containing his findings of fact and conclusions and order.

~~9.2 Service of Decisions. A copy of the decision shall be served on the parties of record or their representatives by regular mail.~~

~~9.3 Judicial Review of State Engineer's Decision. Any person aggrieved by a decision of the State Engineer may, within 60 days after notice thereof, bring a civil action in the district court for a plenary review thereof in accordance with Sections 73-3-14 and -15.~~

R655-2-10. Re-Hearings.

~~10.1 Time for Filing. A petition for re-hearing must be filed within 20 days after notice of a written order or decision of the State Engineer.~~

~~10.2 Contents of Petition. A petition for re-hearing shall set forth specifically the grounds upon which the petitioner considers the order or decision of the State Engineer to be in error.~~

~~10.3 Action on the Petition. Upon the filing of a petition for re-hearing, the State Engineer may set a time for hearing the petition or may summarily grant or deny the petition in whole or in part.~~

~~10.4 Re-Hearings Limited. If an order is made granting the petition for re-hearing, it shall be limited to the matter specified in the order. Upon re-hearing, the State Engineer may affirm his former decision or may abrogate it, change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the State Engineer.~~

R655-2-11. Declaratory Rulings.

~~Any interested person may petition the State Engineer for a declaratory ruling on the applicability of any decision, rule, regulation, or statutory provision relating to the State Engineer. The petition will be in the same form as other petitions and will set forth in detail the specific facts for which the ruling is requested and the manner in which the petitioner claims the rule, regulation, decision or statutory provision may affect him. If the petition sets forth information which requires the issuance of a ruling, the State Engineer shall set the matter down for hearing as in other cases.~~

~~The State Engineer may in his discretion decline to issue declaratory rulings where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing a ruling.~~

~~KEY: water rights procedures~~

~~Date of Enactment or Last Substantive Amendment: 1992~~

~~Notice of Continuation: June 15, 2012~~

~~Authorizing, and Implemented or Interpreted Law: 73-3; 63G-4-203]~~

Natural Resources, Wildlife Resources
R657-29
 Government Records Access
 Management Act

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41585

FILED: 05/04/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Title 63G, Chapter 2, authorizes the Division of Wildlife Resources (DWR) to make rules in accordance with the Government Records Access and Management Act, specifying where and to whom requests for records access shall be directed. This rule sets the process for accessing records in DWR.

SUMMARY OF THE RULE OR CHANGE: Rule R657-29 is necessary to provide an effective and efficient process prescribing where and to whom requests for information shall be directed and provide procedures for access to division records as allowed under Subsection 63G-2-204(2)(d).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-204

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This is a new rule in compliance with Title 63G, Chapter 2, setting the process for accessing protected records within DWR. DWR determines that this new rule will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This is a new rule in compliance with Title 63G, Chapter 2, setting the process for accessing protected records within DWR. Local governments will not be directly or indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This is a new rule in compliance with Title 63G, Chapter 2, setting the process for accessing protected records within DWR. Small businesses will not be directly or indirectly impacted because the rule does not create a situation requiring services from small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This is a new rule in compliance with Title 63G, Chapter 2, setting the process for accessing protected records within DWR. Other persons requesting protected information from DWR will be directly impacted because the rule does allow DWR to charge a set fee to cover the administrative costs of retrieving and compiling the requested data. The following fee schedule applies to all GRAMA requests made to DWR. Opt-in reports are \$50 for all and \$25 per drawing. DOPL wildlife violation reports have no charge for first report and renewals and are \$10 per duplicate report. Copy of licenses have no charge. Research data (examples include prairie dog shape files, sheep surveys, big game data, correspondence, analysis statistics, court records, law enforcement records, and general data requests) have no fee

for the first hour and a \$25.00 per hour fee after the first hour, a \$50 per hour fee for geographic information systems (GIS), and a \$75 per hour fee data processing. Copy fees are 10 cents per self-service copy and 25 cents per staff-service copy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this new rule could create a cost impact to individuals requesting protected data from DWR. The following fee schedule applies to all GRAMA requests made to the DWR. Opt-in reports are \$50.00 for all, \$25.00 per drawing. DOPL wildlife violation reports have no charge for first report and renewals, \$10.00 per duplicate report. Copy of licenses have no charge. Research data (examples include prairie dog shape files, sheep surveys, big game data, correspondence, analysis statistics, court records, law enforcement records and general data requests) have no fee for the first hour, a \$25.00 per hour fee after the first hour, a \$50.00 per hour fee for geographic information systems (GIS), and a \$75.00 per hour fee data processing. Copy fees are 10 cents per self-service copy and 25 cents per staff-service copy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-29. Government Records Access Management Act.

R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63G-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63G-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63G-2-204.

(b) Under authority of Subsection 63G-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63G-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63G-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63G-2-203, may charge a reasonable fee to cover the actual cost of duplicating a

record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees in accordance with Subsection 63J-1-303.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63G-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63G-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination by submitting a notice of appeal in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63G-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63G-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63G-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63G-4-201 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63G-4-203 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 63G-2-204

Pardons (Board of), Administration
R671-202
 Notification of Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41615

FILED: 05/10/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make a few minor verbiage and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The amendment changes verbiage from "will" to "shall" in a couple of places for how the Board of Pardons notifies an offender of his or her hearing. It also adds "type and purpose" to the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-3-201(2) and Subsection 77-27-7(1) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings because the notification of hearings to offenders do not have a fiscal impact on the state budget.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings because the notification of hearings to offenders do not have a fiscal impact on the local budget.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings because the notification of hearings to offenders do not have a fiscal impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings because the amended rule of notification of hearings to offenders does not affect or impact any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings because the amended rule of notification of hearings to offenders do not have a fiscal impact on the state budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts of the amended rule of notification of hearings to offenders on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at buipi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.

R671-202. Notification of Hearings.

R671-202-1. Notification.

(1)(a) An offender ~~[will]~~shall be notified of the date, time, ~~[and] place, and type or purpose~~ of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances~~[-and will be advised as to the purpose of the hearing].~~

(b) In extraordinary circumstances, the hearing may be conducted without the seven day notification~~[-];~~.

(c) ~~[or the]~~An offender may waive this notice requirement.

(2) Public notice of Board hearings ~~[will also]~~shall be posted one week in advance on the Board's website (www.bop.utah.gov).

~~[Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.]~~

KEY: parole, inmates

Date of Enactment or Last Substantive Amendment: [~~October 4, 2012~~]2017

Notice of Continuation: January 31, 2017

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2); 77-27-7(1); 77-27-9(4)(a)

Public Safety, Administration
R698-10
Electronic Meetings

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41586

FILED: 05/04/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rulemaking is required in order for an agency to hold an electronic meeting.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-103 and Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is not an anticipated cost or savings to the state budget because the rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings. The same costs currently associated with conducting a meeting would apply. The rule will allow some members of the public body to participate in the meeting through electronic means.

♦ **LOCAL GOVERNMENTS:** There is not an anticipated cost or savings to the local government because the rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings. The same costs currently associated with conducting a meeting would apply. The rule will allow some members of the public body to participate in the meeting through electronic means.

♦ **SMALL BUSINESSES:** There is not an anticipated cost or savings to small business because the rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings. The same costs currently associated with conducting a meeting would apply. The rule will allow some members of the public body to participate in the meeting through electronic means.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is not an anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings. The same costs currently associated with conducting a meeting would apply. The rule will allow some members of the public body to participate in the meeting through electronic means.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the rule establishes procedures for public bodies of the Department of Public Safety to conduct electronic meetings. The same costs currently associated with conducting a meeting would apply. The rule will allow some members of the public body to participate in the meeting through electronic means.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the rule and find that the enactment of this rule will not have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/18/2017

AUTHORIZED BY: Keith Squires, Commissioner

R698. Public Safety, Administration.

R698-10. Electronic Meetings.

R698-10-1. Authority.

This rule is authorized by Section 52-4-207.

R698-10-2. Purpose.

The purpose of this rule is to establish procedures for conducting electronic meetings by department public bodies.

R698-10-3. Definitions.

(1) Terms used in this rule are defined in Section 52-4-103.

(2) In addition:

(a) "department" means the Utah Department of Public Safety.

R698-10-4. Notice and Procedure of Electronic Meetings.

(1) The following provisions govern any meeting in which one or more members of a public body appear electronically or telephonically:

(a) if one or more public body members may participate electronically or telephonically in a meeting, the public notice of the meeting shall so indicate;

(b) the meeting minutes shall identify all public body members who participate electronically or telephonically in the meeting; and

(c) a member of the public body who participates in the meeting through electronic or telephonic means is considered to be present at the meeting for quorum, participation, and voting requirements.

(2) The department may decline to hold a meeting as an electronic or telephonic meeting due to budget, technical, or logistical issues.

R698-10-5. Anchor Location.

(1) The anchor location for an electronic meeting shall be designated in the meeting notice.

(2) A quorum of a public body is not required to be present at the anchor location for an electronic meeting.

(3) The anchor location shall have space where interested persons and the public may attend and monitor the open portions of the meeting.

KEY: electronic meetings, public meetings, open meetings

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 52-4-103; 52-4-207

**Public Service Commission,
Administration
R746-343-15
Surcharge**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41645

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with S.B. 130, which was passed during the 2017 General Session and which requires that the telecommunications support the program for deaf, hard of hearing, and severely speech impaired persons be funded from the Utah Universal Public Telecommunications Service Support Fund (UUSF) rather than through a separate, dedicated surcharge.

SUMMARY OF THE RULE OR CHANGE: The rule requiring telecommunications corporations to assess their customers \$0.02 per month for each residential and business telephone number is removed. The Public Service Commission (PSC) emphasizes that S.B. 130 goes into effect on 07/01/2017, on which date Section R746-343-15 will be preempted by the statute. Therefore, even though the first possible effective date for this repeal is 07/10/2017, telecommunications providers that have been collecting the \$0.02 dedicated surcharge may terminate that collection as of 07/01/2017.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 54, Chapter 8b

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** For many years, the PSC and the Division of Public Utilities have been administering the program through which deaf, hard of hearing, and severely speech impaired persons are provided with assistive telecommunications devices and other telephony support. The agencies have the budget necessary to continue administering this program. The Legislature's decision to change the program's funding source is not anticipated to impact the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or administer Section R746-343-15. Its removal is not anticipated to pose a fiscal impact to local government.

◆ **SMALL BUSINESSES:** Small businesses that are required to contribute to the UUSF will be required to comply with the PSC's associated rules. This section removal is part and parcel of the PSC's compliance with S.B. 130 (2017). In order to comply with the new legislation, the PSC has determined to impose a \$0.36 monthly per-connection

surcharge to fund both the UUSF and the program for deaf, hard of hearing, and severely speech impaired individuals. The fiscal impact of the adjusted per-connection surcharge is discussed in a companion filing. (EDITOR'S NOTE: A proposed amendment to Section R746-360-4 is under Filing No. 41644 in this issue, June 1, 2017, of the Bulletin.)

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected persons that are required to contribute to the UUSF will be required to comply with the PSC's associated rules. This section removal is part and parcel of the PSC's compliance with S.B. 130 (2017). In order to comply with the new legislation, the PSC has determined to impose a \$0.36 monthly per-connection surcharge to fund both the UUSF and the program for deaf, hard of hearing, and severely speech impaired individuals. The fiscal impact of the adjusted per-connection surcharge is discussed in a companion filing under Filing No. 41644.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons that are required to contribute to the UUSF will be required to comply with the PSC's associated rules. This section removal is part and parcel of the PSC's compliance with S.B. 130 (2017). In order to comply with the new legislation, the PSC has determined to impose a \$0.36 monthly per-connection surcharge to fund both the UUSF and the program for deaf, hard of hearing, and severely speech impaired individuals. The fiscal impact of the adjusted per-connection surcharge is discussed in a companion filing under Filing No. 41644.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, no fiscal impact to businesses is anticipated from the removal of this section. Affected businesses will continue to contribute to the program through the UUSF surcharge, the fiscal impact of which is discussed in a companion filing under Filing No. 41644.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Jennie Jonsson by phone at 801-530-6763, or by Internet E-mail at jjonsson@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

**R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.**

[R746-343-15. Surcharge.

~~A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.~~

~~B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is \$.02 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).~~

~~C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.~~

~~D. The provider will submit its budget for annual review by the Public Service Commission.~~

~~E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.]~~

KEY: assistive devices and technology, speech/hearing [impairments]assistance, [surecharges,]telecommunications
Date of Enactment or Last Substantive Amendment: [October 24, 2016]2017

Notice of Continuation: December 10, 2012

Authorizing, and Implemented or Interpreted Law: 54-8b-[40]

**Public Service Commission,
Administration
R746-360-4
Application of Fund Surcharges to
Customer Billings**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41644

FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for this amendment is to comply with S.B. 130, which was passed during the 2017 General Session, and which requires that all telecommunications access lines be assessed for purposes of funding the Utah

Universal Public Telecommunications Service Support Fund (UUSF).

SUMMARY OF THE RULE OR CHANGE: Through 07/31/2017, providers of access lines, as defined at Subsection 54-8b-2(1), are required to remit to the Public Service Commission of Utah (PSC) 1.65% of their billed intrastate retail rates. As of 08/01/2017, providers of access lines are required to collect from their end-user customers a monthly surcharge of \$0.36 per access line and remit to the PSC at least 98.69% of the total monthly surcharge collections. In order to comply with federal law, the rule includes a mechanism whereby an end-user may be exempted from the per-connection surcharge on a showing that the end-user does not use the access line at issue to facilitate Utah intrastate telecommunications services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-1 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The PSC and the Division of Public Utilities have been administering the UUSF for many years and have the budget to continue doing so. The change in the surcharge mechanism will not have a fiscal impact on the state budget.

◆ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the rules through which the UUSF is funded. No fiscal impact to local government is anticipated.

◆ SMALL BUSINESSES: Small businesses that provide access lines will be required to adjust their billing in order to assess and remit a per-connection surcharge (as opposed to remitting a percentage of their revenues). To comply, these businesses might need to change or modify their billing software. All such costs were considered by the Legislature in determining to allow migration to a per-connection surcharge. Further, such costs will vary and cannot be estimated by the PSC. However, the PSC notes that most of the small businesses affected by this rule have historically assessed a per-connection surcharge in order to fund a program that provides telephony assistance to individuals who are deaf, hard of hearing, or severely speech challenged. Therefore, the PSC anticipates that, for the majority of affected businesses, the migration from a revenue-based remittance to a connection-based remittance will not pose a meaningful fiscal burden.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Customers of businesses that provide access lines will be charged \$0.36 per month per access line.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must collect from their customers and remit to the PSC a monthly per-connection surcharge. Providers of access lines will need to obtain or modify billing software accordingly. The associated costs will vary and cannot be anticipated. However, where most providers have

historically collected a per-connection surcharge to comply with other statutory requirements, it is anticipated that the associated costs will be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, the fiscal impact to businesses will result from IT programming or software that might be necessary in order to comply with a per-connection surcharge requirement rather than a revenue-based remittance requirement. It is anticipated that the conversion costs will be minimal and well within the regulatory budget of Utah's access line providers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennie Jonsson by phone at 801-530-6763, or by Internet E-mail at jjonsson@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

**R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.**

R746-360-4. Application of Fund Surcharges to Customer Billings.

[~~_____ A. _____ Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.~~
~~_____ B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.~~
~~_____ C. Surcharge -- The surcharge to be assessed is as follows:~~
~~_____ 1. through September 30, 2016, 1 percent of billed intrastate retail rates; and~~
~~_____ 2. beginning October 1, 2016, 1.65 percent of billed intrastate retail rates.]~~

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1).

(b) For purposes of applying the statutory definition of "access line," the "functional equivalent of a circuit-switched connection from an end-user to the public switched network" means equipment or technology that allows an end-user to place or receive a real-time voice communication.

(c) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers." (2) Through July 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates.

(3)(a) As of August 1, 2017, and unless Subsection R746-360-4(5) applies, providers shall collect from their end-user customers \$0.36 per month per access line:

(i) that has a physical endpoint within the State of Utah; or

(ii) as to which the provider has record of an associated address within the State of Utah.

(b) The surcharge shall apply directly to each end-user as a separate charge and shall not be included in, nor paid from, the provider's rates or telecommunications revenues.

(4)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(5)(a) An end-user may petition the Commission for a waiver of the surcharge set forth in Subsection R746-360-4(3). Any such petition shall be adjudicated as an informal administrative proceeding.

(b) An end-user that petitions for a waiver of the surcharge has the burden to provide billing records or other substantial documentary evidence demonstrating that, at all times and continuously during the six calendar months preceding the date of petition, the access line being assessed was not used to access Utah intrastate telecommunications services.

(6)(a) An exemption granted under Subsection R746-360-4(5) is valid for a period of one calendar year from the date of issuance.

(b) Following the expiration of an exemption, and upon notice from the Commission, the end-user's provider shall assess the surcharge each month, until such time as the provider is notified by the Commission that a renewed exemption has been granted.

(c) Any assessment remitted to the Commission between the expiration of an exemption and the approval of a petition for renewal of the exemption shall be non-refundable.

(d)(i) The end-user shall bear the sole responsibility to know the expiration date of an exemption granted to the end-user and to ensure that an application for renewal is filed at least 30 days prior to the date of expiration.

(ii) At any proceeding to review a petition for renewal of an exemption, evidence that the end-user was unaware of the expiration date shall be inadmissible.

(iii) A petition for renewal of an exemption is deemed granted unless the Commission issues an order of denial within 30 days of the date on which the petition is filed.

KEY: affordable base rate, public utilities, telecommunications, universal service fund

Date of Enactment or Last Substantive Amendment: [~~October 24, 2016~~2017

Notice of Continuation: November 13, 2013

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15[~~8~~]

Transportation, Program Development **R926-11** Clean Fuel Vehicle Decal Program

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41619

FILED: 05/11/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make technical changes and to correct legal citations included in the rule, to include text that defines and regulates placement of newly devised C Stickers that are to be used as part of the Clean Fuel Vehicle Decal Program and to change the way the waiting list for applications submitted to participate in the program will operate.

SUMMARY OF THE RULE OR CHANGE: This amendment makes technical changes and corrects legal citations included in the rule, adds text that defines and regulates placement of newly devised C Stickers that are to be used as part of the Clean Fuel Vehicle Decal Program, and changes the way the waiting list for applications submitted to participate in the program operates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 23 U.S.C. 166(b)(4) and Section 41-6a-702 and Section 72-6-121

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment may result in savings to the state's annual budget because it makes the Clean Fuel Vehicle Decal Program more efficient. However, quantifying the aggregate savings to the state's budgets is not possible at present and may be negligible.

◆ **LOCAL GOVERNMENTS:** This amendment will not result in an increase in aggregate costs or savings to local governments because the Clean Fuel Vehicle Decal Program does not involve a fee to participate. Permits and their associated C Decals and C Stickers are issued to all applicants in the order that the applications are approved, and the Department of Transportation does not charge a fee to apply.

♦ **SMALL BUSINESSES:** This amendment will not result in an increase in aggregate costs or savings to small businesses because the Clean Fuel Vehicle Decal Program does not involve a fee to participate. Permits and their associated C Decals and C Stickers are issued to all applicants in the order that the applications are approved, and the Department does not charge a fee to apply.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will not result in an increase in aggregate costs or savings to persons other than small businesses, businesses, or local government entities because the Clean Fuel Vehicle Decal Program does not involve a fee to participate. Permits and their associated C Decals and C Stickers are issued to all applicants in the order that the applications are approved, and the Department does not charge a fee to apply.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will not result in an increase in aggregate costs or savings to affected persons because the Clean Fuel Vehicle Decal Program does not involve a fee to participate. Permits and their associated C Decals and C Stickers are issued to all applicants in the order that the applications are approved, and the Department does not charge a fee to apply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will not result in any fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
♦ Mark Burns by phone at 801-366-0198, by FAX at 801-366-0352, or by Internet E-mail at markburns@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

R926. Transportation, Program Development.

R926-11. Clean Fuel Vehicle Decal Program.

R926-11-1. Purpose and Authority.

(1) As authorized in Utah Code ~~[Ann.]~~ Sections 41-6a-702 and 72-6-121 this rule establishes procedures for regulating access to high occupancy vehicle lanes by vehicles with a clean fuel vehicle decal regardless of the number of occupants.

(2) ~~[Federal law]~~ United States Code Title 23, Subsection 166(b) authorizes states to allow the use of high occupancy vehicle (HOV) lanes by inherently low emission vehicles (ILEV) and low emission and energy-efficient vehicles with only a single occupant ~~[through September 30, 2017, unless federal authorization is extended]~~. ~~[Federal law further]~~ United States Code Title 23, Subsection 166(d) requires a state to limit or discontinue the use of these single-occupant vehicles if the presence of ~~[the]~~ such vehicles has degraded the operation of the HOV facility.

R926-11-2. Definitions.

(1) "Hybrid" means a Low Emission and Energy Efficient vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code Section 166.

(2) "ILEV" means an Inherently Low Emission Vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code Section 166(b).

(3) "C ~~[d]~~ Decal" means a clean vehicle ~~[decal]~~ radio frequency identification transponder issued by the department.

(4) ~~["C plate" means a clean fuel special group license plate issued by the Division of Motor Vehicles as had been previously authorized in Utah Code.]~~ "C Sticker" means a clean vehicle sticker issued by the department.

(5) "C ~~[p]~~ Permit" means a permit issued by the department to the owner of an eligible ILEV or Hybrid vehicle.

(6) "Department" means the Utah Department of Transportation.

(7) "HOV" means a highway lane that has been designated for the use of high occupancy vehicles pursuant to Utah Code Section 41-6a-702.

R926-11-3. Permitting of Eligible Vehicles.

(1) Owners of an eligible ILEV and Hybrid vehicle registered in the state of Utah shall qualify for a C ~~[d]~~ Decal, C Sticker, and C ~~[p]~~ Permit upon application to the ~~[d]~~ Department under permitting processes and payment of a fee defined under this rule.

(2) The owner of a vehicle issued a C ~~[d]~~ Decal, C Sticker, and a C ~~[p]~~ Permit is prohibited from placing the C ~~[d]~~ Decal, and C Sticker on any vehicle other than the vehicle for which the ~~[d]~~ Department has issued a C ~~[d]~~ Decal and C ~~[p]~~ Permit. Posting a C ~~[d]~~ Decal on a vehicle other ~~[then] than~~ the vehicle for which the ~~[d]~~ Department has issued a C ~~[d]~~ Decal, C Sticker, and C ~~[p]~~ Permit will render the vehicle owner ineligible to participate in the Clean Fuel Vehicle Program.

(3) The owner of a vehicle issued a C ~~[d]~~ Decal and C Sticker must have in the person's immediate possession the C ~~[p]~~ Permit issued by the ~~[d]~~ Department for that vehicle.

(4) The C ~~[d]~~ Decal must be placed in the windshield of the vehicle, centered near the rearview mirror and 4 inches from the top of the windshield. If the vehicle has an AS-1 line, the C

[d]Decal must be mounted below the line. The C [d]Decal must be mounted directly onto the windshield and cannot be mounted with tape or any other device.

(5) The C Sticker must be placed on the vehicle's right side on the rear of the vehicle in the upright position. The C Sticker must be placed using the sticker's adhesive backing and cannot be affixed with tape or any other device.

([5]6) The [d]Department shall maintain and publish a listing online of all ILEV and Hybrid vehicle makes and models eligible for a C [d]Decal, C Sticker, and C [p]Permit.

([6]7) The [d]Department will charge a fee for the issuance of a C [d]Decal and C Sticker. The amount of the fee will be posted on the application in the amount established by the [d]Department in accordance with Utah Code Section 63J-1-504.

([7]8) The [d]Department may restrict use of the HOV facility by single-occupant vehicles with [a-]C [d]Decals and C Stickers if the operation of the facility [is]becomes degraded. For the purposes of this rule, an HOV facility is considered degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed of 45 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both).

R926-11-4. Issuance of C Decals and C Permits.

(1) Except as set forth in subsection (2), the [d]Department may not issue more than 6,000 C [Decals]Permits and their associated C Decals and C Stickers.

(2) Not more frequently than once a year, the [d]Department may evaluate the operation of the HOV facility and determine whether the facility will continue to operate at an acceptable level of service. For the purposes of this rule, an HOV facility is considered to be operating at an acceptable level of service if vehicles operating on the facility are maintaining a minimum average operating speed of 55 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both). Based on that evaluation and if the [d]Department determines that additional single-occupant vehicles with a C [d]Decal may operate in the HOV lane without compromising operation of the facility, the [d]Department may increase the number of clean fuel decals issued beyond the minimum set forth in subsection R926-11-4(1) and shall issue the appropriate number of C [d]Decals to eligible applicants as set forth under subsection R926-11-4(5).

(3) Vehicle owners with an eligible ILEV or Hybrid vehicle as defined by this rule must submit an application to the [d]Department for a C [d]Decal, C Sticker and C [p]Permit. The application, approved and issued by the [d]Department, shall contain the vehicle owner's name, the license plate number, the vehicle identification number, and the ILEV or Hybrid vehicle make and year model as a condition for obtaining a C [d]Decal, C Sticker and C [p]Permit.

(4) A vehicle owner must pay the fee for the issuance of a C [d]Decal, C Sticker, and C [p]Permit within 30 days of the application being approved. If the owner does not pay the fee within 30 days, the application will be closed. After the application is closed, a vehicle owner must submit a new application for a C [d]Decal, C Sticker, and C [p]Permit.

(5) If more applications for [a-]C [d]Decals, C Stickers, and C Permits are received than the total number [of decals-]the

[d]Department may issue at any one time, C [d]Decals, C Stickers, and C permits will be offered to applicants in the order that applications are approved as C Decals[randomly chosen applicants as they] become available. The number of available C Decals will be published on the C Decal website.

KEY: hybrid vehicles, C [d]Decals, C Stickers, C [p]Permits[-clean-fuel]

Date of Enactment or Last Substantive Amendment: [December 9, 2013]July 10, 2017

Notice of Continuation: December 18, 2013

Authorizing, and Implemented or Interpreted Law: 41-6a-702; 72-6-121

Workforce Services, Housing and Community Development **R990-101** Qualified Emergency Food Agencies Fund (QEFAF)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41611

FILED: 05/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to put into effect changes to the method of determining distributions from the Qualified Emergency Food Agencies Fund (QEFAF) in conjunction with recent amendments to the QEFAF authorizing statute (S.B. 224, from the 2017 General Session).

SUMMARY OF THE RULE OR CHANGE: Recent changes to the State Community Services Act have amended the method of determining distributions from QEFAF, which provides funding for food pantries and similar organizations. Specifically, the statutory changes eliminate the requirement that QEFAF reimbursements be tied directly to the number of pounds of food donated each year. The proposed changes described here provide a revised method of determining how QEFAF funds are to be distributed, clarify the reimbursement process and timelines, and make related technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-8-1009(7)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the state budget because the changes do not affect the QEFAF funding levels set by the Legislature.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments because the changes do not affect the QEFAF funding levels set by the Legislature, and because

the changes use existing funding levels as the baseline for funding distributions.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because the changes do not affect the QEFAP funding levels set by the Legislature, and because small businesses do not receive QEFAP funding, per statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes, and because the changes do not affect the QEFAP funding levels set by the Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including affected persons, because the proposed changes do not affect the compliance responsibilities of qualified agencies receiving QEFAP funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
HOUSING AND COMMUNITY DEVELOPMENT
140 E BROADWAY
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Nathan White by phone at 801-526-9647, or by Internet E-mail at nwhite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R990. Workforce Services, Housing and Community Development.

R990-101. Qualified Emergency Food Agencies Fund (QEFAP).

R990-101-1. Designation as a Qualified Emergency Food Fund Agency.

(1) A qualified emergency food agency, hereinafter referred to as Qualified Agency, is an organization that is;

(a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, or

(b) an association of governments or a municipality which, as part of its activities operates a program that has as the program's primary purpose to;

(i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons, or

(ii) provide food and food ingredients directly to low-income persons.

(2) For initial designation as a Qualified Agency, an organization must file an application with, and must be approved by, the State Community Services Office (SCSO) before receiving distributions under Utah Code Section 35A-8-1009. The application form and instructions are available on the SCSO Website at <http://housing.utah.gov/scso/qefaf>.

(3) After initial designation as a Qualified Agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments or a municipality must continue to operate a program which has, as the program's primary purpose, to warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons, or provide food and food ingredients directly to low-income persons.

(4) All entities applying to be designated as a Qualified Agency must submit a list of current members of the entity's Board of Directors and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Qualified Agency's Memorandum of Understanding each year.

R990-101-2. Use of Funds.

Funds received from the QEFAP program must be expended by the Qualified Agency only for purposes related to warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons, or providing food and food ingredients directly to low-income persons.

R990-101-3. Allowable Expenditures.

(1) Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

(2) Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

(3) Providing - Expenditures directly related to providing food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case

management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

(4) Direct staff costs ~~[-]-- [is defined as-]S[s]alaries and wages, employer's payroll taxes, and fringe benefits for staff directly involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-QEFAF supported activities are allowable only to the extent the staff are engaged in the activities described in this section and must be supported by time and activity reports.~~

~~[(5) Food and food ingredients -- reasonable and necessary purchases of food and food ingredients that are warehoused, distributed, and/or provided directly to eligible low-income individuals and households is allowable.]~~

~~[(6) Administrative e[E]xpenditures - QEFAF funds expended by a Qualifying Agency for administrative costs shall not exceed 5% of the total distributions received by that Qualifying Agency under the QEFAF program for any fiscal year. [Any QEFAF funds unexpended as of the end of Qualifying Agency's fiscal year should be clearly identified and treated as temporarily restricted funds.]~~

R990-101-4. Non-Allowable Expenditures.

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs as provided in R990-101-3(5[6]), are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients, are not allowed. Expenditures not specifically listed in R990-101-3 are not allowed.

R990-101-5. Submission of Claims.

(1) A Qualified Agency ~~may [can]~~ not submit more than one claim per month. Claims must be submitted online using the Web Grants system at the following website address: <http://www.webgrants.community.utah.gov>

(2) QEFAF funds expended prior to the end of the fiscal year but not reimbursed as of the end of the fiscal year may be submitted as claims within a reasonable time after the fiscal year ends. ~~[Claims must be based on the number of eligible pounds of food donated to Qualified Agency during the state fiscal year valued at the rate of \$0.12 per pound.]~~

R990-101-6. Determination of Funding Amounts; Needs Assessment; Discretionary Funds. ~~[Limited Funds Available.]~~

(1) For purposes of this section, the following definitions apply:

(a) "Available appropriation amount" means eighty percent (80%) of the total QEFAF funds appropriated to SCSO for a given fiscal year.

(b) "Designated amount" means the amount of QEFAF funds designated to be available for a Qualified Agency in a given fiscal year, without taking into account the award of any discretionary funds. Designated amounts shall be calculated as follows:

(i) For existing Qualified Agencies:

(A) For fiscal years 2018, 2019, and 2020, by calculating the yearly average of the amount of QEFAF funds allowed to the Qualified Agency over the preceding four (4) fiscal years, or if the Qualified Agency has been designated as a Qualified Agency for a shorter period of time, by calculating the yearly average of the amount of QEFAF funds allowed to the Qualified Agency during the period since it was designated as a Qualified Agency;

(B) For all subsequent fiscal years, as determined by SCSO in its discretion and in consultation with a needs assessment as described in Subsection (3);

(ii) For new Qualified Agencies, as determined by SCSO in its discretion and in consultation with a needs assessment as described in Subsection (3), or if no needs assessment has been completed, as determined by SCSO in its discretion after taking into account:

(A) The needs of the Qualified Agency;

(B) SCSO's available funding;

(C) The Qualified Agency's other sources of funding;

(D) The needs of the community being served by the Qualified Agency;

(E) Any other relevant factors.

(c) "Discretionary funds" means any QEFAF funds which are not included in the available appropriation amount, or which are returned or recouped from a Qualified Agency under Section R990-101-9.

(2) Each Qualified Agency may submit claims under Section R990-101-5 up to the Qualified Agency's designated amount in each fiscal year. The sum total of all claims submitted by all Qualified Agencies shall not exceed the available appropriation amount. If the available appropriation amount is insufficient to fund all the Qualified Agencies in their designated amounts, the funding for each Qualified Agency shall be reduced on a pro rata basis relative to the available appropriation amount.

(3) SCSO shall conduct, or cause to be conducted, a needs assessment for use in determining the designated amounts for existing and new Qualified Agencies as described in Subsection (2) above. Following the initial needs assessment, SCSO may conduct, or cause to be conducted, updated needs assessments at its discretion.

(4) Each Qualified Agency shall cooperate with any requests for information, inspection, or other review of the Qualified Agency's activities made in conjunction with developing a needs assessment. The results of each needs assessment shall be made available to the Qualified Agencies.

(5) A Qualified Agency may submit a request for discretionary funds through the process described in Section R990-109-5. Discretionary funds are limited, and no Qualified Agency has any entitlement to receive discretionary funds for any purpose.

(6) SCSO shall evaluate requests for discretionary funds based on the factors described in Subsection (1)(b)(ii).

~~[Funds available under the QEFAF program are limited. In the event funds deposited into the QEFAF are insufficient to meet~~

~~the claims for distribution received, the SCSO will make distributions to Qualified Agencies in the order in which the claims are received by SCSO. The time of submission, as recorded in the Web Grants system, will be used to determine the order in which claims are received by SCSO.]~~

[R990-101-7. Eligible Pounds.

~~(1) Eligible pounds means the aggregate number of pounds of food and food ingredients, as defined in Utah Code Section 59-12-102 that are donated to the Qualified Agency during the fiscal year and for which Utah sales or use tax was paid by the person donating the food or food ingredients.~~

~~(2) Eligible pounds cannot be carried over to a succeeding fiscal year.~~

~~(3) Food or food ingredients procured through corporate donations, the grocery rescue program, or directly from the manufacturer are not eligible poundage for the QEFAP program.~~

~~(4) Produce donated from home gardeners, commercial gardeners and gardening programs, as well as meat, poultry, eggs and other food and food ingredients donated by farmers, ranchers and others, are not eligible poundage for the QEFAP program.~~

~~(5) Once eligible poundage of food and food ingredients has been reported by one Qualified Agency, poundage shared with other community partners cannot be claimed a second time.~~

~~(6) It is the responsibility of the Qualified Agency to know and properly document the source of all donated poundage claimed.]~~

R990-101-7[8]. Recordkeeping Requirements.

Each Qualified Agency must maintain;

(1) receipts and other original records for donations of food and food ingredients, including schedules and work papers supporting claims made under the QEFAP program for a period of five years following the date of the claim,

(2) a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all QEFAP funds, including accounting records that are supported by source documentation sufficient to determine that QEFAP funds were expended only for purposes as stated in Utah Code Section 35A-8-1009 and R990-101-2, and

(3) effective control and accountability for all QEFAP funds and all property, equipment, and other assets acquired with QEFAP funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the claim.

R990-101-8[9]. Monitoring.

SCSO will monitor Qualified Agency claims and may conduct one or more site visits to inspect records supporting the ~~claims being made~~[pounds of food and food ingredients claimed]. SCSO may also review financial records to determine that distributions received are expended in accordance with Utah Code Section 35A-8-1009(8) and rule R990-101-3. The Qualified Agency agrees to provide all information requested by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

R990-101-9[10]. Return of Unused Funds; Overpayment Recoupment.

(1) ~~If a Qualified Agency does not use all the QEFAP funds it receives in the same fiscal year in which those funds are awarded, the unused funds shall be returned to SCSO at the conclusion of the fiscal year.~~[Amounts to a Qualified Agency under this agreement that are determined by audit to be ineligible for reimbursement because a) such claims were based on ineligible food or food ingredient donations; or b) lack of adequate documentation to support the total poundage of food or food ingredient donations claimed must be immediately returned to the State.]

(2) Expenditures of QEFAP funds determined by audit to be unallowable because the funds were used for purposes not specified above under R990-101-2 or expenditures which are not supported by adequate source documentation shall be;

(a) immediately returned to ~~SCSO~~[the state], or

(b) properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purposes specified in R990-101-2 and R990-101-3.

R990-101-10[11]. Training and Technical Assistance.

SCSO agrees to provide training and technical assistance to a Qualified Agency for help in accessing and submitting a claim online using the Web Grants system. The Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

KEY: Qualified Emergency Food Agencies Fund, QEFAP, antipoverty programs, community action programs

Date of Enactment or Last Substantive Amendment: [July 1, 2013]2017

Authorizing, and Implemented or Interpreted Law: 35A-8-1004

**Workforce Services, Rehabilitation
R993-300
Certification Requirements for
Interpreters for the Hearing Impaired**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41616

FILED: 05/10/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reorganize the rule.

SUMMARY OF THE RULE OR CHANGE: The prior rule was poorly organized and more difficult to use. These changes make the rule more closely track the statutory language.

There are no changes being made to the Division of Rehabilitation practice or procedure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-13-601 et seq. and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ◆ SMALL BUSINESSES: There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 REHABILITATION
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R993. Workforce Services, Rehabilitation.

R993-300. Certification Requirements for Interpreters for the Deaf and Hard of Hearing[~~Hearing Impaired~~].

R993-300-302. Definitions and Acronyms.

(1) "Certified interpreter" means ~~[a person]~~an individual who provides interpreter services and is certified~~[or qualified]~~ as required by state or federal law. This certification is obtained by completing and passing both a knowledge and performance (skills) based test.

(2) "Department" means the Department of Workforce Services.

(3) "Director" means the director of USOR.

(4) "Division" means the division of Services for the Deaf and Hard of Hearing.

(5) "Interpreter service" means a service that facilitates effective communication~~[:]~~ between individuals through American Sign Language (ASL) or a language system or code that is modeled after ASL, in whole or in part, or is in any way derived from ASL.

~~[(a) between a hearing person and a person who is hearing impaired or deaf, including:~~

~~— (i) a student to teacher;~~

~~— (ii) a student to staff; or~~

~~— (iii) a student to peer; and~~

~~— (b) through:~~

~~— (i) American Sign Language (ASL) or a language system or code that is modeled after or derived from ASL, in whole or in part; or~~

~~— (ii) cued language.]~~

(6) "ICB" means the Interpreters Certification Board.

(7) "Manual" means the policy and procedures manual governing the certification of interpreters used by the Division. The Manual is available on the Utah Interpreter Program website.

(8) "NAD-RID" means the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID).

~~[(7) "Local education agency" or "LEA" means:~~

~~— (a) a school district;~~

~~— (b) a charter school; or~~

~~— (c) the Utah Schools for the Deaf and the Blind.~~

~~(8)](9) "USOR" means the Utah State Office of Rehabilitation.~~

R993-300-303. Certification Requirements.

(1) Except as stated in 35A-13-609, an individual is required to be certified, or qualified as required by state or federal law, as a certified interpreter to provide interpreter services.

(2) There are three types of certification certified by the division.

(a) Novice: An entry level certification where an individual has the skills, knowledge and judgment to facilitate communication in a variety of situations, excluding more complex, technical, or other specialized situations.

(b) Professional: A master level certification where an individual has the skills, knowledge and judgment to be able to facilitate communication in almost any situation, including more complex, technical or other specialized situations.

(c) Certified Deaf Interpreter (CDI): A certification where a deaf or hard of hearing individual facilitates communication between:

(i) deaf or hard of hearing individuals and hearing individuals, or

(ii) deaf or hard of hearing individuals and other deaf or hard of hearing individuals, either as part of a team or independently.

The CDI brings a wider range of cultural and linguistic expertise to the interaction. Unlike Novice and Professional certification levels, this certification level allows the CDI to check the deaf or hard of hearing individual's understanding of what is being communicated, rather than solely interpreting the communication. The usage of a CDI is determined by the deaf, hard of hearing and hearing individuals' needs for effective communication.

(4)(3) To be eligible for any level of certification as an interpreter, a candidate must:

(a) submit a completed, signed application;

(b) be of good moral character as defined in the Manual and by the ICB;

(c) have a high school diploma, GED, or equivalent;

(d) be 18 years or older;

(e) submit the appropriate certification examination application fees; and

(f) successfully pass the necessary examinations.

(4) Upon certification, the individual agrees to abide by NAD-RID Code of Professional Conduct as written in the Manual.

[(2) A person who provides interpreter service to an LEA shall complete a background check and submit to ongoing monitoring prior to working in an LEA with a student:

(a) through the person's employer, whether the employer is an LEA or an agency that contracts with an LEA; and

(b) in accordance with the requirements of Title 53A, Chapter 15, Part 15, Background Checks.

(3) If requested by the division, an LEA shall identify and report all persons, including contractors, who provide interpreter services to a student of the LEA. The LEA must also report, if requested, all students who receive interpreter service and the provider of the service.]

R993-300-304. Examination of Candidate for Certification.

The division will test and rate a candidate applying for interpreter certification consistent with the ~~[division's policy manual]~~ Manual. A candidate must pass both a ~~[written]~~ knowledge ~~[examination]~~ and a performance examination. The knowledge examination must be successfully passed before a candidate is eligible to take the performance examination.

R993-300-305. Renewal ~~and Reinstatement~~.

(1) A Professional interpreter certificate or CID may be valid for up to four years. Each year, in order to maintain certification, an individual must pay a renewal fee and complete a renewal form. By the end of the certification period, in order to renew the certificate, an individual must also complete the requisite number of hours of continuing education.

(2) A Novice interpreter certificate expires after four years. Each year, in order to maintain certification, an individual must pay a renewal fee, complete a renewal form and complete the requisite number of hours of continuing education. Novice certified interpreters must successfully obtain a Professional level interpreter certificate or certifications recognized by the ICB prior to the end of four years. Novice certified interpreters that do not obtain an advanced level must wait four years before applying again for a Novice interpreter certification. ~~[A person holding a Professional interpreter certificate may have that certificate renewed every four years by paying a renewal fee and completing the requisite number of hours of qualified continuing education. A person holding a Novice level interpreter certificate may have that certificate renewed annually for up to three years by paying a renewal fee and completing the requisite number of hours of qualified continuing education.]~~

(3) Qualified continuing education is defined as education that is relevant to the profession, enhances the skills of the interpreter and ~~[are]~~is approved by the director in consultation with the ICB. The requisite number of hours of qualified continuing education is set by the director in consultation with the ICB. ~~[The number of hours necessary for renewal is available at all division offices.]~~

~~[(2) A person whose interpreter certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the director. The director may, after consultation with the ICB, require the applicant for reinstatement to complete the procedure for certification or designate the areas of the application process that need to be completed.]~~

R993-300-306. Temporary Exemptions from Certification.

With approval from the division, an individual may engage in the practice of a certified interpreter without being certified as provided in Section 35A-13-609 and the Manual.

R993-300-307. Unlawful and Unprofessional Conduct.

(1) Unprofessional conduct is conduct by a certified interpreter that:

(a) violates, or aids or abets another in violating, generally accepted professional or ethical standards applicable to the profession of a certified interpreter;

(b) physically, mentally, or sexually abuses or exploits an individual through conduct connected with a certified interpreter's practice; or

(c) violates any provision of the NAD-RID Code of Professional Conduct which is available on National Association of the Deaf (NAD) website and the Registry of Interpreters for the Deaf, Inc. (RID) website.

(2) Unlawful conduct is defined in Section 35A-13-611.

(3) A complaint alleging unlawful or unprofessional conduct by a certified interpreter must be filed with the ~~[Department]~~Division within 30 days from the incident, and will be referred to the director.

(a) Complaints not filed within 30 days due to exceptional circumstances beyond the complainant's control may be accepted if the complainant contacts the Division within five days of the date of the exceptional circumstance.

~~(b) The director or designee will determine if the exceptional circumstance qualifies for an extension to the 30 day time frame.~~

~~(4) The director or a designee will review and investigate each complaint as described in the Manual. This includes contacting, or otherwise providing notice to, the interpreter if it appears the interpreter may have engaged in unlawful or unprofessional conduct.~~

~~(5) If it is determined the certified interpreter engaged in unlawful or unprofessional conduct, the director will issue a written decision which will include the appropriate discipline and appeal rights.~~

~~(6) An individual whose interpreter certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the director or designee. The director or designee may, after consultation with the ICB, require the applicant for reinstatement to complete the procedure for certification or designate the areas of the application process that need to be completed.~~

R993-300-308. Grounds for Denial of Certification and Disciplinary Proceedings.

~~(1) Based on r993-300-307, the~~[The] director may, with the [advice]guidance of the ICB:

- ~~(a) refuse to issue a certification to an applicant;~~
- ~~(b) refuse to renew a certificate;~~
- ~~(c) revoke, suspend or restrict a certificate;~~
- ~~(d) place a certified interpreter on probation; or~~

~~(e) otherwise act on the certificate of a certified interpreter who does not meet the qualification for certification under the Interpreter Services for the Deaf and Hard of Hearing Act or these rules.~~

~~(2) The director will issue a decision if any of the actions described in subsection (1) of this section is taken. The decision will be in writing and will:~~

~~(a) advise an applicant or interpreter~~[, translator] on conditions under which he or she may obtain certification, reinstatement or renewal of certification if any. This may include completing the procedure for certification; and

~~(b) notify the applicant or interpreter of his or her appeal rights.~~

~~(3) Within 30 days of the date the decision of the director is issued, the interpreter may appeal the decision by filing a written appeal with the Adjudication and Appeals Division. Hearings will be conducted in accordance with Department rules r993-100-104 through r993-100-114 and the Utah Administrative Procedures Act. Hearings are declared to be informal however the Department reserves the right to record hearings.~~

~~(4) Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by~~

the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ.

R993-300-309. ~~[Different Certificate Levels.]~~Interpreters Certification Board Responsibilities.

~~(1) The ICB functions as an advisory board to the director and performs duties under the director's direction.~~

~~(2) The ICB reviews complaints regarding certified interpreters and applicants. Complaints that are regarding division employees or individuals that are not certified interpreters or applicants are not handled by the ICB.~~

~~(3) The ICB makes recommendations to the director regarding:~~

~~(a) Actions to take on complaints,~~

~~(b) Rules, policy and standards regarding the certification of interpreters,~~

~~(c) All other duties listed within 35A-13-604.~~

~~[~~(1) The division issues two types of certificates: Novice and Professional.

~~(2) Candidates for both types of certificate must pass a written examination and a performance examination.~~

~~(3) Candidates must pass the written examination before taking the performance examination.~~

~~(4) All components of the Novice performance examination must be passed at the same time to successfully acquire Novice Certification.~~

~~(5) Not all components of the Professional performance examination must be passed at the same time. A candidate for a Professional certificate who passes one or more component(s) of the professional performance examination has 12 months to pass all remaining components. If all examination components are not passed within the 12 month period, any passed components are no longer valid and the entire exam, written and performance, must be taken again. A candidate who does not pass any portion of the exam must submit a new application and payment to continue in the examination process.~~

~~(6) Examination procedures, including penalties for not attending a scheduled performance examination, are set by policy and are available in the manual on the division's website.~~

~~(7) The ICB sets the passing scores for all examinations.]~~

KEY: certification, interpreters

Date of Enactment or Last Substantive Amendment: ~~[October 1, 2016]~~2017

Authorizing, and Implemented or Interpreted Law: 35A-13-601 et seq.

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends July 3, 2017.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through September 29, 2017, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Insurance, Administration
R590-206
Privacy of Consumer Financial and
Health Information Rule

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 41296
 FILED: 05/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to incorporate changes to be consistent with the National Association of Insurance Commissioners, NAIC Model #672, Privacy of Consumer Financial and Health Information Regulation. Changes to Model #672 were adopted by the NAIC on 04/11/2017. The model was updated to incorporate changes for compliance with the Fixing America's Surface Transportation (FAST) Act, passed 12/03/2015, which included amendments to the Gramm-Leach-Bliley Act (GLBA), also known as the Financial Services Modernization Act of 1999, enacted 11/12/1999, which eliminated a financial institution's obligation to provide duplicative annual privacy notices under certain circumstances. The changes also correct references to Utah Code and sections within the rule, and correct a few minor grammatical errors.

SUMMARY OF THE RULE OR CHANGE: The changes are as follows: incorporated the Federal Model Privacy Form as Appendix B, allowing licensees to rely on this form as a safe harbor for compliance with the rule; clarified that licensees may continue to use existing language in the current Appendix A, but as of 07/01/2019 will not be considered safe harbor language; updated several citations within the rule to reflect changes to the rule based on adoption of the NAIC model #672; updated reference to a beneficiary in a workers' compensation plan to be a claimant covered by a workers' compensation plan; made changes consistent with NAIC model #672; added language to address settlement options and clarifying the consumer is a beneficiary or claimant that has submitted a claim; made changes consistent with NAIC model #672; added a new Section R590-206-10; and added privacy notices to group policyholders, which adopts specific language for notice requires for group policyholders. The Department of Insurance previously added language in Subsection R590-206-11(3)(a) which was strongly opposed by industry. This revision removes the previously proposed language, and adopts the NAIC model #672 language. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the March 1, 2017, issue of the Utah State Bulletin, on page 42. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed

amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 15 U.S.C. 6805 and Subsection 31A-2-201(2) and Subsection 31A-2-201(3)(a) and Subsection 31A-2-202(1) and Subsection 31A-23a-417(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a direct result of the changes to this rule. Licensees are currently required to comply with the federal law. Any costs or savings would have already been realized as the state adopted the requirements of the FAST Act and the GLBA.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a direct result of the changes to this rule. Licensees are currently required to comply with the federal law. Any costs or savings would have already been realized as the state adopted the requirements of the FAST Act and the GLBA.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small business as a direct result of the changes to this rule. Licensees are currently required to comply with the federal law. Any costs or savings would have already been realized as the state adopted the requirements of the FAST Act and the GLBA.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governmental entities as a direct result of the changes to this rule. Licensees are currently required to comply with the federal law. Any costs or savings would have already been realized as the state adopted the requirements of the FAST Act and the GLBA.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes adopt changes in federal law, correct references to Utah Code and sections within the rule, and correct a few minor grammatical errors. Licensees are currently required to comply with the federal law. Any compliance costs would have already been realized as affected persons adopted the requirements of the FAST Act and the GLBA.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe there is no potential for fiscal impact on the businesses as a result of the changes to the rule. The changes merely adopt existing federal requirements and align the Utah rule with the NAIC model #672, adopted 04/11/2017.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
 ADMINISTRATION

ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/10/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-206. Privacy of Consumer Financial and Health Information Rule.

R590-206-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

R590-206-3. Rule of Construction.

(1)(a) ~~The examples in this rule[and], the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.~~

(b) Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B -- Federal Model Privacy Form, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted [September 26, 2000]April 11, 2017, by the National Association of Insurance Commissioners, [is]are incorporated by reference and available for inspection at the Insurance Department[of Insurance] and the [Department]Office of Administrative Rules.

(c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

(2)(a) Licensees may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.

(b) Use of the Federal Model Privacy Form in Appendix B is not required. Licensees may continue to use other types of privacy notices, including notices that contain the examples in this regulation and/or the sample clauses in Appendix A, provided that such notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this rule.

(3)(a) Subjection to Subsection (b), licensees may continue to use privacy notices that contain the examples in this rule and the sample clauses in Appendix A.

(b) Licensees may not rely on the use of privacy notices with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this regulation after July 1, 2019.

R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, ~~[directly-]or [through a-]~~that individual's legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is

acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections ~~[4,]-]15[~~-and~~]~~, 16 and 17 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under ~~[Sections 5, 6 and 9]~~Section 10 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation~~[-plan]~~ policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual described in (A), (B), or (C), other than as permitted under Sections ~~[4,]-]15[~~-and~~]~~, 16 and 17 of this rule, such an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A ~~[beneficiary in]~~claimant covered by a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4~~[-:]~~(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4~~[-:]~~(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4~~[-:]~~(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under ~~[that]~~ a policy choosing a settlement option involving an ongoing relationship with the licensee;

(E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(F) ~~The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;~~

~~(F)~~(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

~~(G)~~(H) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures

Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee,

agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any non-public personal ~~financial~~ information ~~[or a consumer or customer]~~ to any person other than the principal ~~[from or through which such consumer or customer seeks to obtain, or has obtained, a product or service]~~ or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4~~[(17)]~~~~(b)~~(c)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section ~~[14]~~15 of this rule, except as permitted by Section ~~[15 or]~~16 or 17 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL ~~[FINANCIAL]~~ INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in ~~[Subsection R590-206-4]~~Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in Subsection R590-206-4~~[(20)]~~(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (i) Federal, state or local government records;
- (ii) Widely distributed media; or
- (iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

- (i) That the information is of the type that is available to the general public; and
- (ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

R590-206-5. Initial Privacy Notice to Consumers Required.

(1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5[-](5)[~~of this section~~]; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections [15 and]16 and 17.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5[-](1)(b)[~~of this section~~] if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third

party, other than as authorized by Sections [15 and]16 and 17, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5[-](1)[~~of this section~~] as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5[-](1)[~~of this section~~].

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5[-](1)(a)[~~of this section~~] within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's

transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section ~~[40]11~~. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7~~[-](4)~~ the licensee may deliver its privacy notice according to Subsection R590-206-7~~[-](4)(c)~~.

R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2) Exception to General Rule. A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 15, 16, or 17 and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in this paragraph.

(3)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement

services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section ~~[40]11~~.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections ~~[15 and]~~ 16 and 17;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections ~~[15 and]~~ 16 and 17;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections ~~[15 and]~~ 16 and 17 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-~~[11.]~~12(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal ~~[financial]~~ information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7~~[-](2)~~.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections ~~[15 and]~~ 16 and 17, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7[-](3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7[-](1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7[-](1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections ~~15 and~~ 16 and 17, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7[-](1)(a), 7[-](1)(h), 7[-](1)(i), and 7[-](2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5[-](1)(b) and Subsection R590-206-8[-](3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section ~~11~~ 11. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses and the Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are ~~[found]~~ included in Appendix A ~~[Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners. Appendix A is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules] and Appendix B, respectively, of this rule.~~

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-~~[11:]12~~(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7~~[-](1)(b)~~ and R590-206-7~~[-](1)(c)~~, and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8~~[-](4)(e)~~.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections ~~[4,]~~ 15 ~~and~~, 16 and 17, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section ~~[40]~~ 11.

R590-206-10. Privacy Notices to Group Policyholders.

Unless a licensee is providing privacy notices directly to covered individuals described in Subsection R590-206-4(6)(b)(v) (A), (B) or (C), a licensee shall provide initial, annual and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 5 through 9 of this rule, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.

R590-206-11. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site ~~the information included in the privacy notice has not changed since the customer received the previous notice, and, at least once per year, the licensee inserts a clear and conspicuous statement on a notice or disclosure the licensee issues under any other provision of law to announce that the annual privacy notice is available on the licensee's web site and that the annual privacy notice will still be mailed to customers who request it by calling a toll-free telephone number]; or~~

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5[-](1)(a), the annual notice required by Subsection R590-206-6[-](1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5[-](1), 6[-](1) and 9[-](1), respectively, by providing one notice to those consumers jointly.

R590-206-~~44~~12. ~~Limits~~ Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections ~~[44,-]~~15 ~~and~~, 16 and 17.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-~~44~~12(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-~~44~~12(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-~~44~~12(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-~~42~~13. Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections ~~[45 or]~~16 and 17 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections ~~[45 or]~~16 and 17 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections ~~[15-01]~~16 and 17 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections ~~[15-01]~~16 and 17:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections ~~[15-01]~~16 and 17, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections ~~[15-01]~~16 and 17 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections ~~[15-01]~~16 and 17 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections ~~[15-01]~~16 and 17 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-~~[13]~~14. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate,

disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-~~[13-]~~14(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

R590-206-~~[14]~~15. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and ~~[11]~~12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections ~~[15-01]~~16 and 17 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of ~~[Paragraph (1)(b) of this subsection]~~ Subsection R590-206-15(1)(a)(ii) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections ~~[15-01]~~16 and 17 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-~~[14-]~~15(1)~~[of this section]~~ may include marketing of the licensee's own products or services or marketing of financial

products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

R590-206-[45]16. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5[-](1)(b), the opt out in Sections 8 and [44]12, and service providers and joint marketing provisions in Section [44]15 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or [to enforce a contractual obligation or other legal claim against a customer, or] in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's producer;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that [is]are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

R590-206-[46]17. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5[-](1)(b), the opt out in Sections 8 and [44]12, and service providers and joint marketing in Section [44]15 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-~~[27-303]~~27a-207, 31A-~~[27-307]~~27a-301 and 31A-~~[27-310]~~27a-401, ~~[are]~~is not subject to the requirements of R590-206-5-(1)(b), the opt out in Sections (8) and (~~[4]~~12), and other notice requirements of ~~[R590-206]~~this rule.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal ~~[financial]~~information as permitted under Subsection R590-206-8-(6).

R590-206-~~[17]~~18. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee~~[or an affiliate of the licensee]~~: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement~~[.]~~ or issuance~~[or renewal]~~; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance

functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-~~[18]~~19. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections ~~[17 through 21]~~18 through 22 shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of Sections ~~[17 through 21]~~18 through 22 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections ~~[17 through 21]~~18 through 22 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-~~[19]~~20. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section ~~[10]~~11, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-~~[17-]~~18(1).

R590-206-~~[20]~~21. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections ~~[17 through 21]~~18 through 22.

R590-206-~~21~~22. Relationship to State Laws.

Nothing in Sections ~~[47 through 21]~~18 through 22 shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

R590-206-~~22~~23. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-~~23~~24. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-~~24~~25. Violation.

Pursuant to Section 31A-23a-402, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-~~25~~26. Severability.

If any ~~[section or portion of a section]~~provision of this rule or its ~~[applicability]~~application to any person or ~~[circumstance]~~

~~is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected]~~shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

~~[R590-206-26. Effective Date.~~

~~———— (1) Effective date. This rule is effective July 1, 2001.~~

~~———— (2)(a) Notice requirement for consumers who are the licensee's customers on the effective date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.~~

~~———— (b) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.~~

~~———— (3) Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Subsection R590-206-14.(1)(a)(ii) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal financial information, as long as the licensee entered into the agreement on or before July 1, 2000.]~~

KEY: insurance law

Date of Enactment or Last Substantive Amendment: 2017

Notice of Continuation: June 15, 2016

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-25-317; 15 U.S.C. 6805

End of the Notices of Changes in 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.

Natural Resources, Oil, Gas and Mining; Oil and Gas **R649-2-9** Refusal to Agree

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 41614
FILED: 05/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to set timeframes and supply other information required by a recent statutory change. The statutory change arises from S.B. 191 from the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: This emergency rule specifies the manner in which an owner must consent to the drilling and operation of a well and agree to bear that owner's proportionate share of the costs of the drilling, testing, completion, and equipping of that well, as well as the timeframe within which such consent must be given. Specifying these details in rule is required by the recently amended Subsections 40-6-2(4) and 40-6-2(11). Consent

must be given in writing within 30 days of written notice being received.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-6-6.5 and Subsection 40-6-2(11) and Subsection 40-6-2(4)

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: Regular rulemaking (which is presently being carried out) will not provide the detail concerning the manner and timeframe within which an owner must consent to a well required by the recently amended Subsections 40-6-2(4) and 40-6-2(11) by the 05/09/2017 effective date of that provision. Without this emergency rule, as of 05/09/2017, the operative provisions of the statute, which are critical to the functioning of the compulsory pooling procedures set forth in Section 40-6-6.5, and which depend upon these details concerning manner and timeframe of consent being spelled out in regulation, will become impossible to enforce and apply as of 05/09/2017. Reliance solely on the ongoing regular rulemaking process would therefore place the agency in violation of the requirements of state law.

ANTICIPATED COST OR SAVINGS TO:
♦ **THE STATE BUDGET:** The rule specifies the manner in which owners must consent to the drilling and operation of

wells. There are no anticipated changes in costs or savings to the Division of Oil, Gas and Mining under this rule. This rule is also not expected to have any budgetary impacts on other state agencies or have any other direct or indirect costs to the state.

◆ **LOCAL GOVERNMENTS:** This rule is not expected to create any costs or savings for counties, cities, towns, school districts, special districts, or any other form of local government. The emergency rule only clarifies existing regulations in certain respects which do not implicate costs, and will therefore have no effect on anticipated costs or savings.

◆ **SMALL BUSINESSES:** Small businesses are not expected to be impacted by this emergency rule. This emergency rule only clarifies existing regulations in certain respects which do not implicate costs, and will therefore have no effect on anticipated costs or savings for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not expected to be impacted by this rule because the rule only clarifies existing provisions of the current statutory and regulatory scheme concerning compulsory pooling.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Landowners and operators would not experience any increase in compliance costs under this rule. These types of parties could potentially experience a reduction in their attorney and legal fees relating to costs of appearing before the Board of Oil, Gas and Mining. The Division does not have access to industry expenditures for Board hearings, so a specific costs savings could not be reasonably estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This emergency rule will have no fiscal impact on businesses as it only clarifies existing provisions of the current statutory and regulatory scheme concerning compulsory pooling.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING; OIL AND GAS
 ROOM 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

EFFECTIVE: 05/09/2017

AUTHORIZED BY: John Baza, Director

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-2. General Rules.

R649-2-9. Refusal to Agree.

1. An owner shall be deemed to have refused to agree to bear his proportionate share of the costs of the drilling and operation of a well under Section 40-6-6.5 if:

1.1. The operator of the proposed well has, in good faith, attempted to reach agreement with such owner for the leasing of the owner's mineral interest or for that owner's voluntary participation in the drilling of the well.

1.2. The owner and the operator have been unable to agree upon terms for the leasing of the owner's interest or for the owner's participation in the drilling of the well. For purposes of Utah Code Section 40-6-2(4) and -2(11), the consent and agreement required of an owner shall be manifested by the owner agreeing in writing, within thirty (30) days from the date the notice required by Utah Code Section 40-6-2(11) is received, to bear that owner's proportionate share of the costs of drilling, testing, completion, equipping and operation of the well.

2. If the operator of the proposed well shall fail to attempt, in good faith, to reach agreement with the owner for the leasing of that owner's mineral interest or for voluntary participation by that owner in the well prior to the filing of a Request for Agency Action for involuntary pooling of interests in the drilling unit under Section 40-6-6.5 then, upon written request and after notice and hearing, the hearing on the Request for Agency Action for involuntary pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for negotiations between the operator and the owner.

KEY: oil and gas law

Date of Enactment or Last Substantive Amendment: May 9, 2017

Notice of Continuation: August 26, 2016

Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.

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 <http://www.rules.utah.gov/publicat/code.htm>. 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.

Administrative Services, Risk Management **R37-1** Risk Management General Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41601
FILED: 05/05/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 63A, Chapter 4, makes provisions for the duties of all state entities that participate in the Risk Management Fund. Section 63A-4-101 provides that the State Risk Manager shall recommend that the Executive Director of the Department of Administrative Services make rules, prescribing reasonable and objective underwriting and risk control standards for state agencies; prescribing the nature and extent of risks covered by the Risk Management Fund; prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the Fund; and developing procedures for making claims, proof of loss, and dispute resolution. Sections 63G-7-902 and 63G-7-903 enumerate the duties and responsibilities of covered persons and entities against whom a claim is made or suit is brought.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been

received during or since the last five-year review of this rule from any interested persons either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to continue the implementation of specific, reasonable and objective underwriting and risk control standards that are intended to reduce liability to the Risk Management Fund. Moreover, this rule should continue because it more specifically prescribes the actual duties of all entities that participate in the Risk Management Fund.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

AUTHORIZED BY: Kenneth Hansen, Deputy Director

EFFECTIVE: 05/05/2017

**Administrative Services, Risk
Management
R37-2**

**Risk Management State Workers'
Compensation Insurance
Administration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41602
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63A-4-101(2) requires the State Risk Manager to acquire and administer workers' compensation insurance and implement a risk management and loss prevention program for the purpose of reducing risks, accidents, and losses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during or since the last five-year review of the rule from any interested persons who either supported or opposed the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to maintain the implementation of mandated workers' compensation coverage and further reasonable and objective risk management and loss prevention programs in order to reduce workers' compensation claims and costs. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

AUTHORIZED BY: Kenneth Hansen, Deputy Director

EFFECTIVE: 05/05/2017

**Administrative Services, Risk
Management
R37-3**

**Risk Management Adjudicative
Proceedings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41603
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule was enacted in compliance with the Utah Administrative Procedures Act, Section 63G-4-101, et seq.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during or since the last five-year review of this rule from any interested persons either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must continue to provide notice that the Division of Risk Management's management of state funds and purchase of insurance products and services are not governed by the Administrative Procedures Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

AUTHORIZED BY: Kenneth Hansen, Deputy Director

EFFECTIVE: 05/05/2017

**Administrative Services, Risk
Management
R37-4**

**Adjusted Utah Governmental Immunity
Act Limitations on Judgments**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41604

FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 63G-7-605(4), which requires the state risk manager to make rules in each even-numbered year to establish adjustments made by the legislative fiscal analyst to the limitation of judgment amounts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during or since the last five-year review of this rule from any interested persons either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must continue in order to comply with Subsection 63G-7-605(4).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

AUTHORIZED BY: Kenneth Hansen, Deputy Director

EFFECTIVE: 05/05/2017

**Capitol Preservation Board (State),
Administration
R131-3**

Use of Magnetometers on Capitol Hill

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41573

FILED: 05/02/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63C-9-301(3)(a) requires the Capitol Preservation Board to make rules governing, administering, and regulating the Capitol Hill facilities and grounds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Capitol Preservation Board is required to make rules to govern, administer, and regulate the Capitol Hill facilities and grounds. This rule regulates the use of security devices which electronically detect ferrous metals. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov

- ◆ Dana Jones by phone at 801-538-3074, or by Internet E-mail at danajones@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 05/02/2017

Commerce, Consumer Protection
R152-34
Postsecondary Proprietary School Act
Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41610
 FILED: 05/08/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 13-34-104(6) requires the Division of Consumer Protection (Division) to adopt rules establishing certain standards and criteria for the awarding of educational credentials, bona fide instruction through faculty interaction, and the determination of the ability of students to benefit from a program. Subsection 13-34-107(7) authorizes the Division to make rules providing for matters relating to bonding of schools. Subsection 13-2-5(1) gives the Director of the Division authorization to issue rules to administer and enforce the chapters listed in Section 13-2-1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division is not aware of any written comments regarding the rules. The interpretation of this rule is at times the subject of informal proceedings before the Division.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes standards and criteria for the awarding of education credentials, bona fide instruction through faculty interaction, and the determination of the ability of students to benefit from a program in fulfillment of the requirement of Subsection 13-34-104(6), see Section R152-34-4 and Subsection R152-34-6(l). The rule also establishes the amount of the bond, certificate, or letter of credit required under Subsection 13-34-107(7)(a), and other issues relating to bond, certificates, or letters of

credit, see Subsections R152-34-7(9) through (14). This is necessary since the statute does not establish a specific bond amount. The rule also facilitates the Division's administration of registrations under the Postsecondary Proprietary School Act, e.g. Sections R152-34-1, R152-34-3, R152-34-5, R152-34-6, and R152-34-10 and the Division's statutory charge to protect students from deceptively promoted, inadequately staffed, and unqualified proprietary institutions and programs and enforce the Postsecondary Proprietary School Act, e.g., Sections R152-34-7, R152-34-9, and R152-34-11. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 CONSUMER PROTECTION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jacob Hart by phone at 801-530-6636, or by Internet E-mail at jfhart@utah.gov

AUTHORIZED BY: Daniel O'Bannon, Director

EFFECTIVE: 05/08/2017

Environmental Quality, Air Quality
R307-105
General Requirements: Emergency
Controls

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41629
 FILED: 05/15/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-112 allows the executive director of the Department of Environmental Quality, with the concurrence of the Governor, to declare an air pollution emergency and order reductions in emissions of air pollutants. Rule R307-105 establishes the levels of air pollutants that create an emergency, as well as other factors used in determining that an emergency exists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No written comments have been received about this rule since its last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-105 satisfies federal regulations implementing the Clean Air Act that prevent ambient pollutant concentrations from reaching certain levels that cause significant harm to human health and the environment. These requirements are found in 40 CFR 51.151. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

OPPOSING THE RULE: No comments were received in opposition or support of this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Incorporating federal rules into the Utah rules enables the Utah Division of Air Quality to enforce its own air quality rules. This prevents EPA from having to step in and take over Utah's regulatory scheme over its own sources of air pollution. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

Environmental Quality, Air Quality **R307-214**

National Emission Standards for Hazardous Air Pollutants

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41630
FILED: 05/15/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules regarding the control, abatement, and prevention of air pollution from all sources. Rule R307-214 does this by incorporating by reference the federal standards for emissions of hazardous pollutants from various sources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

Environmental Quality, Air Quality **R307-401**

Permit: New and Modified Sources

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41631
FILED: 05/15/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 requires a person to give notice to the director if the person is planning to "construct a new installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged." Rule R307-401 sets forth the requirements that the owner or operator of a source of air pollution must address in giving notice to the executive secretary under Section 19-2-108. The Air Quality Board is able to adopt rules that implement Section 19-2-108 because Section 19-2-104 gives the Board the power to control, abate, and prevent air pollution from all sources. A

notice requirement and its implementation is a necessary part of controlling, abating, and preventing air pollution. Rule R307-401 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP). This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received about this rule since its last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-401 is required by Section 19-2-108 and is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP), which is incorporated by reference under Rule R307-110. This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Air Quality
 R307-403**

**Permits: New and Modified Sources in
 Nonattainment Areas and Maintenance
 Areas**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41632
 FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 gives the Air Quality Board the power to control, abate, and prevent air pollution from all sources. Rule R307-403 is an air pollution permitting program that helps control, abate, and prevent air pollution. Rule R307-403 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP). This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received about this rule since its last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-403 is required by Section 19-2-108 and by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP), which is incorporated by reference under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Air Quality
 R307-406
 Visibility**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41634
FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 gives the Air Quality Board the power to control, abate, and prevent air pollution from all sources. Rule R307-406 helps control, abate, and prevent air pollution for the purpose of increasing visibility at Class I areas including Zion, Bryce, Capitol Reef, Arches, and Canyonlands National Parks. Rule R307-406 is also required by Section XVII, Visibility Protection, of the State Implementation Plan. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart P.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received about this rule since its last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-406 is required by Section XVII, Visibility Protection, of the State Implementation Plan (SIP), which is incorporated by reference into the Utah Air Quality Rules under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart P. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

Environmental Quality, Air Quality
R307-410

Permits: Emissions Impact Analysis

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41636
FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-410 prevents air pollution by requiring an emissions impact analysis from sources to determine what amount of pollution will contribute to a violation of federal air quality standards. Rule R307-410 is also required by Section II, Review of New and Modified Air Pollution Sources and Section XVIII, Demonstration of GEP Stack Height, of the State Implementation Plan (SIP). The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received about this rule since its last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-410 is required by Section XVIII, Demonstration of GEP Stack Height, of the Utah State Implementation Plan (SIP), which is incorporated by reference under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Air Quality
 R307-414**

Permits: Fees for Approval Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41638
 FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-414 does this by setting up the procedures, including the payment of fees, for administering an air quality permitting program designed to control, abate, and prevent air pollution.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received about this rule since its last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The fees required in Rule R307-414, which are approved annually by the Legislature, comprise a substantial portion of the budget of the Division of Air Quality. Without these fees, the Division would not be able to review and enforce the air quality permitting program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

**Environmental Quality, Air Quality
 R307-415**

**Permits: Operating Permit
 Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41639
 FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-109.1(4)(a) directs the Air Quality Board to "establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit." Section 19-2-104 also allows the Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-415 controls, abates, and prevents air pollution by establishing an emissions fee and requiring permits for air pollution under the Title V permitting program in the Clean Air Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments received on this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-415 is required by Title V of the Clean Air Act; 40 CFR Part 70; and Section 19-2-109.1 of the Utah Code. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W

SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

Environmental Quality, Air Quality **R307-417** Permits: Acid Rain Sources

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41640
FILED: 05/15/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-417 does this by preventing air pollution that contributes to acid rain through an air pollution permitting program. The rule incorporates by reference the federal requirements in 40 CFR Part 72 into Utah's air quality rules for the purpose of meeting the requirements of Title IV of the Clean Air Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments received on this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule incorporates by reference the federal requirements in 40 CFR Part 72 into Utah's air quality rules for the purpose of meeting the requirements of Title IV of the Clean Air Act. By incorporating the federal requirements into the state rules, Utah is able to implement and enforce its own acid rain program. Without this rule, the EPA would have the sole authority to implement the program in Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

Environmental Quality, Air Quality **R307-420** Permits: Ozone Offset Requirements in Davis and Salt Lake Counties

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41641
FILED: 05/15/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-420 does this by implementing ozone offset provisions that require sources to offset increases in emissions before getting an approval order to construct, modify, or relocate under Rule R307-401. The offsetting program is designed to prevent future net increases in air pollution.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments on this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-420 is required to minimize the

growth in emissions of ozone precursors in Salt Lake and Davis counties. This rule supports Section IX.D (Ozone Maintenance Plan) of the State Implantation Plan, which is incorporated by reference in Section R307-110-13. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Air Quality
 R307-421**

**Permits: PM10 Offset Requirements in
 Salt Lake County and Utah County**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41642
 FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-421 does this by ensuring that the growth of particulate matter precursor pollutants are minimized by the use of emission offsets.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments received on this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-421 is required to minimize the

growth in emissions of PM10 precursors in Salt Lake and Utah County. The rule supports the PM10 Maintenance Plan, which is incorporated by reference in Section R307-110-10. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Air Quality
 R307-424**

**Permits: Mercury Requirements for
 Electric Generating Units**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41643
 FILED: 05/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule was enacted under Section 19-2-104. Section 19-2-104 authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source." Rule R307-424 controls mercury emissions from coal-fired electric generating units. It also establishes maximum allowable quantities of mercury that may be emitted by a source. Each of these regulatory actions (controlling emissions and setting emission standards) are allowed under Section 19-2-104.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments in opposition to this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it sets mercury emission limits for coal-fired power plants. It also implements federal emission standards found in 40 CFR 61.24 and is required by Section 111(d) of the Clean Air Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/15/2017

**Environmental Quality, Water Quality
R317-3
Design Requirements for Wastewater
Collection, Treatment and Disposal
Systems**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41613
FILED: 05/09/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-5-104(1)(h) authorizes the Water Quality Board to review engineering reports, plans, specifications, and other data relating to the construction of sewerage systems and wastewater treatment works, disposal systems, and parts thereof, and to issue construction permits for their installation, modification, improvement, or upgrade. Subsection 19-5-104(1)(f) authorizes the Board to make rules that implement or effectuate the powers and duties of the Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE

FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes minimum design requirements for wastewater collection, treatment, and disposal systems. The division director is charged to review and approve these systems. The rule is required to meet this charge. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 05/09/2017

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-100
Medicaid Primary Care Network
Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41588
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to implement the Medicaid program through administrative rules. Additionally, Section 26-1-5 authorizes the Department to adopt rules that provide services under the Primary Care Network (PCN), and Section 1115 of the Social Security Act authorizes these services under a waiver of federal Medicaid requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it defines emergency services, spells out services available to PCN members, and includes member cost-sharing provisions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 05/05/2017

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-200
Non-Traditional Medicaid Health Plan
Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41589
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to implement the Medicaid program through administrative rules. Additionally, Section 26-1-5 authorizes the Department to adopt rules that provide services under Non-Traditional Medicaid (NTM), and Section

1115 of the Social Security Act authorizes these services under a waiver of federal Medicaid requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it defines emergency services, spells out services available to NTM members, and includes member cost-sharing provisions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 05/05/2017

**Insurance, Administration
R590-238
Captive Insurance Companies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41569
FILED: 05/02/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-20(3)(a) authorizes the commissioner to write rules to implement Title 31A, the Utah Insurance Code. Section 31A-37-106 authorizes the commissioner to write rules to determine circumstances under which a branch captive insurance

company is not required to be a pure captive insurance company; to require statement, document, or information to be provided to the commissioner to obtain a certificate of authority; to prescribe one or more capital requirements for a captive, in addition to those required in Section 31A-37-204; to establish capital and surplus requirements or maintenance of free surplus requirements; to waive or modify requirements for public notice and hearing for a merger, consolidation, conversion, mutualization, or redomestication; to approve the use of one or more reliable methods of valuation and rating for different types of captives or industrial insured groups; to prohibit or limit investments that threaten solvency or liquidity; to determine the financial reports under Section 31A-37-507; and to establish standards to ensure that certain entities are able to exercise control of risk management functions of a controlled unaffiliated insurance business.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department received one industry comment in 2015 regarding this rule. The comment suggested a number of changes regarding accounting services provided by captive insurance managers and where accountability lies.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the financial, reporting, record-keeping, and other requirements necessary for the regulation of captive insurance companies as required under the Captive Insurance Companies Act, which is Title 31A, Chapter 37. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 05/02/2017

Labor Commission, Administration
R600-2
 Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41587
 FILED: 05/05/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-1-104 authorizes the Labor Commission to adopt rules necessary to administer the Workers' Compensation Act, The Occupational Disease Act, the Antidiscrimination Act, and the Occupational Safety and Health Act. Pursuant to that authority and in order to provide for the orderly conduct of Commission business, the Commission has adopted Rule R600-2, which establishes the Commission's regular business hours.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five-year period, the Labor Commission has received no written comments supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of its duty to administer the various statutes identified above, the Labor Commission is required to establish standards for conduct of Commission business, including rules for hours of business and filing of business documents. This rule should be continued for those purposes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 LABOR COMMISSION
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 05/05/2017

Labor Commission, Adjudication
R602-1
 General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 41605
FILED: 05/08/2017**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-1-104 authorizes the Labor Commission to adopt rules and conduct adjudicative proceedings. In order to administer an orderly system of adjudication, it is necessary for the Commission to set standards for computing filing deadlines and other time limits involved in the adjudicative process, and to set witness fees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during the last five-year review period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary to establish standards for computing time limits and setting witness fees in the Commission's adjudicative process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
ADJUDICATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 05/08/2017

Labor Commission, Adjudication
R602-2

Adjudication of Workers' Compensation
and Occupational Disease Claims

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 41612
FILED: 05/09/2017**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-1-104 authorizes the Labor Commission to conduct adjudicative proceedings to resolve workers' compensation and occupational disease claims. Sections 34A-1-104 and 34A-2-802 also authorize the Commission to adopt rules to carry out those adjudicative functions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during the last five-year review period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of the Commission's continuing responsibility to administer a system for adjudication of workers' compensation and occupational disease claims, it is necessary for the Commission to establish procedures for pleadings and discovery, standards for use and compensation of medical panels, and standards for evaluating settlement agreements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
ADJUDICATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 05/09/2017

Natural Resources, Water Rights
R655-1

Wells Used for the Discovery and
Production of Geothermal Energy in the
State of Utah

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41593
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 05/05/2017

Natural Resources, Water Rights
R655-6

Administrative Procedures for Informal
Proceedings Before the Division of
Water Rights

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41592
FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule establishes and governs the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63G-4-203. The rule governs all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by Rule R655-2.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 05/05/2017

Natural Resources, Water Rights
R655-15

Administrative Procedures for
 Distribution Systems and Water
 Commissioners

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 41591
 FILED: 05/05/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated pursuant to Subsections 73-2-1(5)(a) and 73-2-1(5)(b) which authorize the State Engineer to make rules governing water distribution systems, water commissioners, and water measurement and reporting that are consistent with Title 73, Chapter 5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WATER RIGHTS
 ROOM 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 05/05/2017

Natural Resources, Wildlife Resources
R657-2

Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 41580
 FILED: 05/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-13-2 and 63G-3-601, this rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the Division of Wildlife Resources (DWR).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-2 were received since May 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-2 sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and DWR specifically governing the requests for agency action; declaratory orders brought pursuant to Section 63G-4-503; requests for species reclassification under Rule R657-3; post issuance requests for a variance or amendment to a license; and permit, tag, or certification of registration. Rule R657-2 sets the standard procedure for filing timelines, pre-hearing procedures, decisions and orders, and judicial review. This rule helps to govern the legal proceedings for DWR. It is imperative that this rule be in order. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/03/2017

**Natural Resources, Wildlife Resources
R657-4
Possession of Live Game Birds**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41583
FILED: 05/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-13-4, 23-14-18, and 23-14-19, the Wildlife Board is authorized to adopt rules for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-4 were received since May 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-4 provides the procedures and requirements for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/03/2017

**Natural Resources, Wildlife Resources
R657-22
Commercial Hunting Areas**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41581
FILED: 05/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-17-6, the Wildlife Board is authorized to make rules and regulations concerning the operation of commercial hunting areas.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-22 were received since June 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-22 provides the procedures and requirements for establishing, maintaining, and operating a commercial hunting area. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of the commercial hunting area program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/03/2017

**Natural Resources, Wildlife Resources
R657-30**

Fishing License for the Terminally Ill

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41582
FILED: 05/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 23-19-36 authorizes a resident who is terminally ill and has less than five years to live, to receive a free fishing license. Rule R657-30 provides the procedures for a terminally ill person to obtain a free fishing license.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-30 were received since May 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-30 is necessary to provide an effective and efficient process for issuing free fishing licenses to persons who are terminally ill.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/03/2017

**Public Safety, Fire Marshal
R710-1**

**Concerns Servicing Portable Fire
Extinguishers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41571
FILED: 05/02/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-7-204. Subsection 53-7-204(1)(l) states that the board shall "regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property." The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers, to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, to outline adjudicative proceedings, and to establish a fee schedule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the industry it regulates. Industry and the public may address the fire prevention board at any of their regularly scheduled meetings. No one has requested to be on the board agenda in the last five years. No written communication for or against this rule has been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers, to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, to outline adjudicative proceedings, and to establish a fee schedule. This rule allows the Fire Prevention Board to regulate portable fire extinguishers and automatic fire suppression systems as required by statute. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/02/2017

Public Safety, Fire Marshal

R710-2

Rules Pursuant to the Utah Fireworks Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41572

FILED: 05/02/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-7-204. Subsection 53-7-204(1)(b)(ii) establishes "safety and other requirements for placement and discharge of display fireworks." The purpose of this rule is to establish the minimum safety standards for retail storage, handling, and sale of class C common state approved explosives, indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the industry that it regulates. Industry and the public may address the Fire Prevention Board at any of their regularly scheduled meetings. No one has requested to be on the Board agenda in the last five years. No written communication for or against this rule has been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Class C fire works are an explosive used by the public for entertainment. They are dangerous. The Utah State Legislature has tasked the fire prevention board with regulating these explosives. As long as these explosives remain a threat to public safety, it is imperative that they be regulated to ensure a minimum level of safety for the public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/02/2017

Public Safety, Fire Marshal

R710-3

Assisted Living Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41574

FILED: 05/03/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-7-204. Subsection 53-7-204(1)(b)(i) states that the board shall establish standards for the prevention of fire and for the protection of life and property against fire and panic in...an assisted living facility."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the industry that it regulates. Industry and

the public may address the Fire Prevention Board at any of their regularly scheduled meetings. No one has requested to be on the Board agenda in the last five years. No written communication for or against this rule has been received in the last five years. The requirements in this rule work in concert with the requirements of the Department of Health in ensuring the safety of the individuals in these facilities.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities. This rule establishes the criteria used by the state and local fire departments in the inspection of these facilities. These inspections ensure the safety of the occupants from the threat of fire. Many of the individuals in these facilities have a diminished capacity for self preservation. This rule sets a standard to protect them. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
 FIRE MARSHAL
 ROOM 302
 5272 S COLLEGE DR
 MURRAY, UT 84123-2611
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/03/2017

**Public Safety, Fire Marshal
 R710-4**

**Buildings Under the Jurisdiction of the
 State Fire Prevention Board**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 41575
 FILED: 05/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section

53-7-204. This rule adopts the standards used to ensure the fire safety in all of the occupancy's that are regulated by the Fire Prevention Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the industry that it regulates. Industry and the public may address the Fire Prevention Board at any of their regularly scheduled meetings. No one has requested to be on the Board agenda in the last five years. No written communication for or against this rule has been received in the last five years. This rule adopts the standards used to ensure the fire safety in all of the occupancy's that are regulated by the Fire Prevention Board.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly-owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
 FIRE MARSHAL
 ROOM 302
 5272 S COLLEGE DR
 MURRAY, UT 84123-2611
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/03/2017

**Public Safety, Fire Marshal
 R710-7**

**Concerns Servicing Automatic Fire
 Suppression Systems**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41584
 FILED: 05/04/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-7-204. This rule adopts standards for the installation of various types of fire suppression systems not otherwise adopted in the statute. It establishes licensing requirements for the companies that install these systems, pursuant to Subsection 53-7-216(3): "the board shall by rule prescribe an application form and standards for licensure or certification qualification and for renewal and revocation." This rule also defines service tags and outlines maintenance requirements for these systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the industry that it regulates. Industry and the public may address the Fire Prevention Board at any of their regularly scheduled meetings. No one has requested to be on the Board agenda in the last five years. No written communication for or against this rule has been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish regulations governing those concerns that service Automatic Fire Suppression Systems. This rule applies to systems regulated by the state adopted editions of National Fire Protection Association (NFPA), Standard 12, Standard on Carbon Dioxide Extinguishing Systems; NFPA, Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; NFPA, Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; NFPA, Standard 17, Standard for Dry Chemical Extinguishing Systems; NFPA, Standard 17A, Standard for Wet Chemical Extinguishing Systems; NFPA, Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; NFPA, Standard 2001, Clean Agent Fire Extinguishing Systems. These standards are not adopted elsewhere in statute or rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 FIRE MARSHAL

ROOM 302
 5272 S COLLEGE DR
 MURRAY, UT 84123-2611
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/04/2017

**Public Safety, Fire Marshal
 R710-9
 Rules Pursuant to the Utah Fire
 Prevention and Safety Act**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41577
 FILED: 05/03/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-7-204. This rule establishes conduct of the Board and establishes the means where by the Board may amend the fire code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is a long standing rule that is well understood by the Board, state fire marshals office, and the fire service. The public and fire service may address the Fire Prevention Board with their concerns at any of their regularly scheduled meetings. No one has requested to be on the Board agenda, relevant to this rule, in the last five years. No written communication for or against this rule has been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, for deputizing Special Deputy State Fire Marshals, for

procedures to amend incorporated references, for establishing Board subcommittees, for enforcement of the rules of the State Fire Marshal, for requirements for the firefighter support restricted account, for regulation of novelty lighters, for procedures for the issuance of blasting permits, and for amendments and additions. This rule establishes an appeals board for decisions made by the State Fire Marshals Office. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302

5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ted Black by phone at 801-284-6352, or by Internet E-mail
at tblack@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 05/03/2017

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. 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 EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Natural Resources, Wildlife Resources

R657-29

Government Records Access Management Act

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 41579

FILED: 05/03/2017

SUMMARY: The five-year review was not filed by the deadline. Therefore, the rule has expired and will be removed from the Administrative Code. (EDITOR'S NOTE: The agency has filed a proposed new Rule R657-29 under Filing No. 41585 in this issue, June 1, 2017, of the Bulletin to put the rule back in place.)

EFFECTIVE: 05/03/2017

End of the Notices of Notices of Five Year Expirations 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.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

No. 41364 (REP): R277-483. Persistently Dangerous Schools
Published: 04/01/2017
Effective: 05/10/2017

No. 41365 (AMD): R277-612. Foreign Exchange Students
Published: 04/01/2017
Effective: 05/10/2017

Commerce

Occupational and Professional Licensing
No. 41349 (AMD): R156-38b. State Construction Registry Rule
Published: 04/01/2017
Effective: 05/08/2017

No. 41366 (AMD): R277-615. Standards and Procedures for Student Searches
Published: 04/01/2017
Effective: 05/10/2017

No. 41348 (AMD): R156-55a. Utah Construction Trades Licensing Act Rule
Published: 04/01/2017
Effective: 05/08/2017

Environmental Quality

Air Quality
No. 41100 (AMD): R307-841. Residential Property and Child-Occupied Facility Renovation
Published: 01/01/2017
Effective: 05/09/2017

No. 41346 (AMD): R156-76-501. Administrative Penalties - Unlawful Conduct
Published: 04/01/2017
Effective: 05/08/2017

No. 41100 (CPR): R307-841. Residential Property and Child-Occupied Facility Renovation
Published: 04/01/2017
Effective: 05/09/2017

Real Estate

No. 41350 (AMD): R162-2f. Real Estate Licensing and Practices Rules
Published: 04/01/2017
Effective: 05/10/2017

No. 41101 (AMD): R307-842. Lead-Based Paint Activities
Published: 01/01/2017
Effective: 05/09/2017

Education

Administration
No. 41363 (AMD): R277-211-6. Proposed Consent to Discipline
Published: 04/01/2017
Effective: 05/10/2017

No. 41101 (CPR): R307-842. Lead-Based Paint Activities
Published: 04/01/2017
Effective: 05/09/2017

NOTICES OF RULE EFFECTIVE DATES

Health

Disease Control and Prevention; HIV/AIDS, Tuberculosis
Control/Refugee Health
No. 41334 (AMD): R388-804. Special Measures for the
Control of Tuberculosis
Published: 03/15/2017
Effective: 05/11/2017

Family Health and Preparedness, Licensing
No. 41323 (AMD): R432-700. Home Health Agency Rule
Published: 03/01/2017
Effective: 05/15/2017

Public Service Commission

Administration
No. 41337 (AMD): R746-200-7. Termination of Service
Published: 04/01/2017
Effective: 05/15/2017

Veterans' and Military Affairs

Administration
No. 41351 (AMD): R978-1. Rule Governing Veterans' Affairs
Published: 04/01/2017
Effective: 05/09/2017

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2017 through May 15, 2017. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

EDITOR'S NOTE: Due to space constraints, neither Index is included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).
