R105. Attorney General, Administration.
R105-2. Records Access and Management.
R105-2-1. Purpose.

This rule provides information about submitting requests and appeals to the Attorney General's Office under the Government Records Access and Management Act.

R105-2-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Coordinator
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City, Utah 84114

(If by mail)

GRAMA Coordinator
Office of the Attorney General
PO Box 140860
Salt Lake City, Utah 84114-0860

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-3. Appeals.

Appeals regarding questions of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City UT 84114
(If by mail)

GRAMA Appeal
Office of the Attorney General
PO Box 140860
Salt Lake City, Utah 84114-0860

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-4. Records of Client Agencies.

Requesters seeking copies of records of client agencies of the Attorney General's Office must make their request directly to the client agency. See Section 67-5-15(1).

R105-2-5. Record Sharing.

For the purpose of record sharing between governmental entities as provided in Section 63G-2-206, the Attorney General's Office is one governmental entity and all divisions in the office are part of that entity.

KEY: public records, government documents, records access, GRAMA
October 25, 2011 63G-2-204
Notice of Continuation September 28, 2016

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-101. Title.

This rule is known as the "Physical Therapy Practice Act Rule".

R156-24b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

(a) accredited by CAPTE; or

(b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(7) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

R156-24b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 24b.

R156-24b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

(4) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency. A passing score on the FSBPT's National Physical Therapy Examination shall be verified through a score transfer from the FSBPT.

(2) An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

R156-24b-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24b is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-24b-303b. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

(i) patient/physical therapist relationships;

(ii) confidentiality;

(iii) documentation;

(iv) charging and coding;

(v) compliance with state and/or federal laws that impact the practice of physical therapy; and

(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(e) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

(i) lecturing or instructing a course;

(ii) in a post-professional doctorate or transitional doctorate program; or

(iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The course shall be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the course.

(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:

(A) department in-service;

(B) seminar;

(C) lecture;

(D) conference;

(E) training session;

(F) webinar;

(G) internet course;

(H) distance learning course;

(I) journal club;

(J) authoring of an article or textbook publication;

(K) poster platform presentation;

(L) specialty certification through the American Board of Physical Therapy Specialties;

(M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(N) post-professional doctorate from a CAPTE accredited program;

(O) lecturing or instructing a continuing education course; or

(P) study of a scholarly peer-reviewed journal article.

(ii) The following limits apply to the number of contact hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in courses meeting these requirements;

(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;

(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;

(G) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(I) a maximum of 12 contact hours for authoring a textbook chapter;

(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(K) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(L) a maximum of six contact hours for authoring a poster or platform presentation.

(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association, organization, or facility involved in the practice of physical therapy; or

(iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(f) Documentation. Each licensee 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 licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

(A) the date of the course;

(B) the name of the course provider;

(C) the name of the instructor;

(D) the course title;

(E) the number of contact hours of continuing education credit; and

(F) the course objectives.

(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article,

the documentation shall contain the following:

(A) the dates of study or research;

(B) the title of the article, textbook chapter, poster, or platform presentation;

(C) an abstract of the article, textbook chapter, poster, or platform presentation;

(D) the number of contact hours of continuing education credit; and

(E) the objectives of the self-study course.

(6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-24b-305. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary physical therapist or temporary physical therapist assistant license to a person who meets all qualifications for licensure as a physical therapist or physical therapist assistant except for the passing of the required examination, if the applicant:

(a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;

(b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;

(c) is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and

(d) has registered to take the required licensure examination.

(2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed the examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.

In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:

(1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;

(2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and

(3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full reinstatement of the license.

R156-24b-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended July 2010, which is hereby adopted and incorporated by reference;

(2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended November 2010, which is hereby adopted and incorporated by reference;

(3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;

(4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended November 2010, which is hereby adopted and incorporated by reference; and

(5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference.

R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

(1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and

(2) a physical therapist shall provide treatment to a patient at least every tenth treatment but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) A course approved by one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505:

(a) Utah Physical Therapy Association (UPTA);

(b) American Physical Therapy Association (APTA); or

(c) Federation of State Boards of Physical Therapy (FSBPT).

(2) The level of supervision required during the course established under Section 58-24b-505 is general supervision, as defined in R156-1-102a(4)(c).

(3) General supervision shall be provided by a licensed health care provider who:

(a) has a scope of practice that includes dry needling; and

(b) can demonstrate two years of dry needling practice techniques.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

March 24, 2015 58-24b-101
Notice of Continuation October 6, 2016 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rule.
R156-26a-101. Title.

This rule is known as the "Certified Public Accountant Licensing Act Rule".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in this rule:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(b) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in this rule means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

R156-26a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 26a.

R156-26a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each of five or more colleges or universities in Utah which has an accredited program as set forth in Section R156-26a-302a(1)(a), a majority of which committee are to be licensed CPAs.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities and shall include:

(a) advising the Board as to the acceptability of an educational institution;

(b) assisting the Board to make a final determination pursuant to R156-26a-302a(4)(c) of whether an applicant is qualified to sit for the AICPA examination; and

(c) advising the Board regarding proposed changes to rules.

(3) The committee shall consider, when advising the Board of the acceptability of the educational institution, the following:

(a) the institution's accreditation;

(b) the acceptability by other state licensing boards;

(c) the faculty qualifications; and

(d) other educational resources.

(4) There is created in accordance with Subsection 58-1-203(1)(f), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs. The committee shall be appointed and serve in accordance with Section R156-1-205.

(5) The duties and responsibilities of the Peer Review Committee shall be advising the Board on peer reviews matters and shall include:

(a) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(b) evaluating compliance of CPE programs;

(c) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(d) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(e) providing technical assistance to the Division; and

(f) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the Association of Advanced Collegiate Schools of Business (AACSB), or the Accreditation Council for Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in taxation, or a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial

accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Commission on Colleges and Universities, North Central Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools and Western Association of Schools and Colleges from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;
(B) computers;
(C) economics;
(D) ethics;
(E) finance;
(F) statistics and quantitative methods;
(G) written and oral communications; and
(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;
(B) finance;
(C) managerial or cost;
(D) systems; and
(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The Division in collaboration with the Board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the Board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination are clarified or supplemented as follows:

(a) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services (CPAES) requires in order to sit for the examination.

(b) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302c. Qualifications for Licensure - Examinations.

The Division in collaboration with the Board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of CPA and CPA firm licensees.

(a) The purpose of the program is to monitor compliance

with professional standards.

(b) The program shall emphasize education and may include other remedial actions when non-compliance is found.

(c) If a licensee is unwilling or unable to comply with or intentionally disregards professional standards, the administering organization shall refer the matter to the Division for consultation and determination of appropriate action.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(20).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or

(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective January 1, 2009 as amended, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a pass with deficiencies or fail report, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of system reviews; or

(B) results in an evaluation and report on selected engagements in the case of engagement reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm seeking approval under R156-26a-303a(7)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 120 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly

to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable to the CPA to provide evidence of meeting the minimum CPE requirements specified under this rule.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year. The 80 hours shall include at least one hour of education on the Utah Certified Public Accountant Licensing Act and Certified Public Accountant Licensing Act Rule and at least three hours of ethics education which shall cover one or more of the following areas: the AICPA Code of Professional Conduct, case-based instruction focusing on real-life situational learning, ethical dilemmas faced by accounting professionals, or business ethics.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis, economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in this rule, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for

longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under this rule, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation

of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and may include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means: An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and

contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the Division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the Division, the Board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the Division at least 30 days prior to their expiration date two

times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the Division, within 60 days of receiving notification by the Division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the Board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The Board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

Renewal procedures shall be in accordance with Section R156-1-308.

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the Division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted June 1, 2008, which is hereby incorporated by reference; or

(3) a CPA firm using the name of a person who is not a licensed certified public accountant as part of the CPA firm name with the exception that a CPA firm may continue to use the name of a former owner who was a CPA but who has retired or is no longer active in the CPA firm.

KEY: accountants, licensing, peer review, continuing professional education

February 11, 2016	**58-26a-101**
Notice of Continuation October 6, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-72. Acupuncture Licensing Act Rule.
R156-72-101. Title.

This rule is known as the "Acupuncture Licensing Act Rule".

R156-72-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement by ingestion, topical, inhalation, or acupoint injection therapy (AIT), to the body of a patient. Administration does not include: venous injections, immunizations, legend drugs and controlled substances.

(2) "Controlled substance" means a drug or substance as defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(32) and (64).

(4) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes but is not limited to trigger point therapy, Ahshi points and dry needling techniques.

(5) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine.

(6) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

(7) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

R156-72-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 72.

R156-72-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-72-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM, formerly National Commission for the Certification of Acupuncturists (NCCA), in acupuncture or oriental medicine.

R156-72-302b. Qualifications for Licensure - Animal Acupuncture.

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(4)(a)(iii), a licensed acupuncturist practicing animal acupuncture must complete 100 hours of animal acupuncture training and education. The training and education shall include:

(1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;

(2) completing animal anatomy training; and

(3) completing the remaining hours in animal specific continuing education.

R156-72-302c. Informed Consent.

In accordance with Subsection 58-72-302(6), in order for patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient which shall include:

(1) a written review of symptoms; and

(2) a statement, signed by that patient, that consent is given to provide acupuncture treatment.

R156-72-302d. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to maintain office, instruments, equipment, appliances, and supplies in a safe and sanitary condition;

(2) failing as a licensee to maintain the professional development activity requirements, as required by the NCCAOM;

(3) failing to abide by and meet standards of the "Code of Ethics" set by NCCAOM, adopted on October 14, 2008, which are hereby incorporated by reference;

(4) failing to maintain medical records for a ten-year period;

(5) failing to obtain education and training recognized by NCCAOM if performing acupoint therapy injections; and

(6) administering venous injections, immunizations, legend drugs and controlled substances.

R156-72-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 72 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) In accordance with Section 58-72-303, a licensee must complete 30 continuing education units (CEU) within the two-year renewal period.

KEY: acupuncture, licensing

July 9, 2015	**58-72-101**
Notice of Continuation September 8, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authority and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Definitions.

(1) Terms used in this rule are found in Section 63M-7-502.

(2) In addition:

(a) "APRN" means Advanced Practice Registered Nurse;

(b) "DOPL" means Utah Department of Commerce, Division of Professional and Occupational Licensing;

(c) "primary victim" means a victim who has been directly injured by criminal conduct;

(d) "program" means the Victim Services Grant Program, authorized under Section 63M-7-506(l)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims; and

(e) "secondary victim" means a victim who is not a primary victim but who has a relationship with the victim and was traumatically affected by the criminally injurious conduct that occurred to the victim, including an immediate family member of a victim such as a spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian or other person who the reparations officer reasonably determines bears an equally significant relationship to the primary victim.

R270-1-3. Funeral and Burial Award.

(1) Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

(2) Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

(3) Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

(a) Three days in-state

(b) Five days out-of-state

(4) When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-4. Negligent Homicide and Hit and Run Claims.

(1) Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

(2) Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-5. Counseling Awards.

(1) Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

(a) The reparations officer shall approve a standardized treatment plan.

(b) The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

(c)(i) Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual and/or group counseling sessions or $2,500 maximum mental health counseling award.

(ii) Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

(d) All other secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual and/or group counseling sessions or $1,250 maximum mental health counseling award.

(e) Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

(f) Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

(2) In-patient hospitalization shall only be considered for primary victims when the treatment has been recommended by a licensed therapist in life-threatening situations. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

(3) Residential and day treatment shall only be considered for primary victims when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

(4) Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

(5) Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the reparations officer on a case by case basis upon review of the mental health treatment plan.

(6) Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the DOPL, working under the supervision of a supervisor approved by the DOPL. Student interns otherwise eligible under Subsection 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for

counseling services provided by the student.

(7) Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

(8) The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an APRN, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

(9) Chemical dependency specific treatment will not be compensated unless the reparations officer determines that it is directly related to the crime. The board may review extenuating circumstance cases.

R270-1-6. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When award denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-7. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the fund.

R270-1-8. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

R270-1-9. Emergency Awards.

Pursuant to Section 63M-7-522, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-10. Loss of Earnings.

(1) Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

(2) Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The board may review extenuating circumstances on loss of earnings claims for the purpose of consideration and authorization of extensions beyond set limits.

R270-1-11. Moving, Transportation Expenses.

(1) Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $1,000. Board approval is needed where extenuating circumstances exist.

(2) Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-12. Collateral Source.

(1) Money from the fund shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

(2) Money from the fund shall be used before money from the Utah Medical Assistance Program, established in Section 26-18-10, when considering allowable benefits for victims of violent crime.

R270-1-13. Record Retention.

(1) Retention of the UOVC annual report and crime victim case files shall be as follows:

(2) Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

(3) Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to the Utah Department of Administrative Services, Division of Archives and Records Service. Case files will be retained in the State Records Center for 99 years and then destroyed.

R270-1-14. Awards.

(1) Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the reparations officer shall pay the bills by the date of service. The reparations officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the reparations officer shall determine payment on a percentage basis.

(2) Awards will only be granted for costs the reparations officer determines are directly related to or resulting from criminally injurious conduct.

R270-1-15. Essential Personal Property.

(1) Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

(2) The reparations officer may allow up to $5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5000 where extenuating circumstances exist.

(3) The reparations officer may allow up to $1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of $1500 where extenuating circumstances exist.

R270-1-16. Subrogation.

(1) Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the fund and will not be credited toward a particular victim or claimant award amount.

(2) Pursuant to Subsections 63M-7-519(2), in such instances where a settlement against a third party appears imminent, the director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the board with the concurrence of the director.

R270-1-17. Unjust Enrichment.

Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

(1) Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

(2) Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

(3) Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

(4) Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

(5) Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-18. Prescription or Over-the-Counter Medications.

(1) Reimbursement of prescription or over-the-counter medications and/or medication management services used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

(2) Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

(3) Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-19. Peer Review Committee.

A volunteer Peer Review Committee may be established to review issues and/or provide input to office staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the board by written internal policy and procedure.

R270-1-20. Medical Awards.

Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

(1) All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

(2) The reparations officer reserves the right to audit any and all billings associated with medical care.

(3) The reparations officer will not pay any interest, finance, or collection fees as part of the award.

(4)(i) If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, the office shall pay 70% of billed charges for eligible medical bills.

(ii) If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, the office shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

(iii) This rule does not apply to expenses governed by R270-1-5 or R270-1-23.

(5) This rule supersedes any other agreements regarding payment of medical bills by the office.

(6) Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-21. Misconduct.

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the reparations officers shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based. Reparations officers shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

R270-1-22. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the office. Reparations officers may extend claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

R270-1-23. Sexual Assault Forensic Examinations.

Pursuant to Subsections 63M-7-502(20) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the office in the amount of up to $750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, the office may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed $350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

(1) A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

(2) Victims shall not be charged for sexual assault forensic examinations.

(3) Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

(4) The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

(5) The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

(6) The office may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

(7) A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

(8) The application or billing for the sexual assault forensic examination must be submitted to the office within one year of the examination.

(9) The billing for the sexual assault forensic examination shall:

(a) identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

(b) indicate the claim is for a sexual assault forensic examination; and

(c) itemize services and fees for services.

(10) All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before money in the fund is used. Pursuant to Subsection 63M-7-513(5), the director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

(11) Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

(12) Restitution for the cost of the sexual assault forensic examination may be pursued by the office.

(13) Payment for sexual assault forensic examinations shall be considered for the following:

(a) Fees for the collection of evidence, for forensic documentation only, to include:

(i) history;

(ii) physical; and

(iii) collection of specimens and wet mount for sperm.

(b) Emergency department services to include:

(i) emergency room, clinic room or office room fee;

(ii) cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

(iii) serum blood test for pregnancy;

(iv) morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

(v) treatment for the prevention of sexually transmitted disease up to four weeks.

(14) The victim of a sexual assault that is requesting payment by the Office for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the office.

R270-1-24. Loss of Support Awards.

(1) Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

(2) Except as provided in R270-1-24(3), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

(3) The board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-25. Victim Services.

(1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparation awards and associated administrative costs for the upcoming year.

(2) When the program is authorized, the board:

(a) shall determine the amount available for the program for that year;

(b) shall announce the availability of program funds through a request for proposals or other similar competitive process approved by the board; and

(c) may establish funding priorities and shall include any priorities in the announcement of funds.

(3) Requests for funding shall be submitted on a form approved by the board.

(4) The board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The board may award less than the amount determined in R270-1-25(C)(2)(a). The decisions of the board may not be appealed.

(5) An award by the board shall not constitute a commitment for funding in future years. The board may limit funding for ongoing projects.

(6) Award recipients shall submit quarterly reports to the board on forms established by the director. The office staff shall monitor all victim services grants and provide regular reports to the board.

R270-1-26. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
October 24, 2016 Title 63M, Chapter 7, Part 5
Notice of Continuation June 15, 2016

R270. Crime Victim Reparations, Administration.
R270-2. Crime Victim Reparations Adjudicative Proceedings.
R270-2-1. Authority and Purpose.

This rule is adopted pursuant to Subsection 63M-7-515(1) for the purpose of creating procedures for adjudicating contested determinations made by a reparations officer.

R270-2-2. Definitions.

Terms used in this rule are found in Section 63M-7-502.

R270-2-3. Contested Determinations.

Pursuant to Section 63M-7-515(1), the director shall review contested determinations by a reparations officer or designate the board to review the contested determination. The director will keep the board apprised of all contested determinations. The decision of the director or the board is final and may not be appealed.

R270-2-4. Three Year Limitation.

Pursuant to 63M-7-506(1) and 63M-7-525(2) any right to contest a determination of eligibility or of a benefit by a reparation officer shall expire three years from the date of application with the office. The Director may extend the right to contest a determination after the three year expiration rule if extenuating circumstances exist or if the claim has already been extended by a reparation officer pursuant to R270-1-22.

KEY: appellate procedures, administrative procedures
October 24, 2016 63M-3-7-515
Notice of Continuation June 15, 2016

R277. Education, Administration.
R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.
R277-215-1. 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-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) 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.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2) Revocation is presumed appropriate if an educator:

(a) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);

(b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(d) intentionally provides alcohol or illegal drugs to a minor.

(3)(a) Suspension of ten years or more is presumed if an educator is convicted of any felony not specified in Subsection (2).

(b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:

(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

(4) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(5) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53A-11-802(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (4)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member; or

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

(i) Board rule or LEA policy; or

(ii) verbal or written notice from an LEA or UPPAC;

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(9) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;
(c) the educator's misconduct directly involved a student;
(d) the educator's misconduct involved a particularly vulnerable student;
(e) the educator's misconduct resulted in physical or psychological harm to a student;
(f) the educator violated multiple standards of professional conduct;
(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;
(h) the educator's misconduct continued after investigation by the LEA or UPPAC;
(i) the educator holds a position of heightened authority as an administrator;
(j) the educator's misconduct had a significant impact on the LEA or the community;
(k) the educator's misconduct was witnessed by a student;
(l) the educator was not honest or cooperative in the course of UPPAC's investigation;
(m) the educator was convicted of crime as a result of the misconduct;
(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and
(o) the educator is on criminal probation or parole; or
(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.
(10) A mitigating factor may include the following:
(a) the educator's misconduct was the result of strong provocation;
(b) the educator was young and new to the profession;
(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;
(d) the educator's attitude suggests amenability to supervision and training;
(e) the educator has little or no prior disciplinary history;
(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;
(g) the educator was a less active participant in a larger offense;
(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;
(i) the educator has voluntarily sought treatment or made restitution for the misconduct;
(j) there was insufficient training or other policies that might have prevented the misconduct;
(k) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;
(l) the educator self-reported the misconduct; or
(m) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.
(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.
(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educators, disciplinary presumptions
August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-403. Student Reading Proficiency and Notice to Parents.
R277-403-1. 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) Section 53A-17a-150, which directs the Board to make rules to implement the K-3 Reading Improvement Program and to require progress reports from each LEA documenting the LEA's satisfaction with its reading goals.
(2) The purpose of this rule is:
(a) to designate assessments required in Section 53A-1-606.6;
(b) to provide definitions of terms used in Section 53A-1-606.6;
(c) to provide necessary testing and reporting windows and timelines; and
(d) to require submission by LEAs of student reading assessment data to the Board.

R277-403-2. Definitions.
(1) "Benchmark reading assessment" means the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment.
(2) "Competency" means a demonstrable acquisition of a specified knowledge, skill, or ability that has been organized into a hierarchical arrangement, leading to higher levels of knowledge, skill, or ability.
(3) "Notification to parents" means notice by any reasonable means, including electronic notice, notice by telephone, written notice, or personal notice.
(4) "Reading below grade level" means that a student:
(a) performs below the benchmark score on the benchmark reading assessment; and
(b) requires additional instruction beyond that provided to typically-developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade.
(5) "Reading remediation interventions" means reading instruction or reading activities, or both, given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.
(6) "Utah eTranscript and Record Exchange" or "UTREx" means the same as that term is defined in Section R277-404-2.

R277-403-3. Superintendent Responsibilities.
(1) The Superintendent shall provide procedures for LEAs to determine expected reading competencies of students in grade 1, grade 2, and grade 3.
(2) To the extent that funds are available, the Superintendent shall distribute the diagnostic reading assessment tool designated in Section 53A-1-606.7 to LEAs.

R277-403-4. LEA Responsibilities - Timelines.
(1) An LEA shall administer the benchmark reading assessments in grade 1, grade 2, and grade 3 within the following testing windows:
(a) the first benchmark before September 30;
(b) the second benchmark between December 1 and January 31; and
(c) the third benchmark between the middle of April and June 15.
(2) An LEA shall report benchmark reading assessment

results to the Superintendent by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(3) If a benchmark assessment or supplemental reading assessment indicates a student is reading below grade level, the LEA shall implement the notification and reading remediation interventions described in Section 53A-1-606.6.

(4) An LEA shall report benchmark reading assessment results to parents of students in grade 1, grade 2, and grade 3 by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(5) An LEA shall also report to parents the student's reading level at the end of grade 3.

(6) An LEA shall submit to UTREx the following information from the benchmark assessment:

(a) whether or not each student is reading on grade level at each administration of the assessment;

(b) whether or not each student received reading intervention; and

(c) the composite score for each student at each administration of the assessment.

(7) An LEA that selects the reading assessment technology shall use the assessment consistent with Board directives.

KEY: students, reading, competency

October 11, 2016	**Art X, Sec 3**
Notice of Continuation June 10, 2013	**53A-1-606.6(2)**
	53A-1-401

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-1. 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;

(c) Subsection 53A-1-402(1)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness;

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements;

(d) Subsection 53A-1-404(2), which requires a local school board's auditing standards to include financial accounting and student accounting;

(e) Subsection 53A-1-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and

(f) Section 53A-3-404, which requires annual financial reports from all school districts.

(2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

(a) where a student learns at least in part:

(i) at a supervised brick and motar location away from a student's home; and

(ii) through an online delivery; and

(b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

(7) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Electronic High School" means a rigorous program offering 9-12 grade level courses delivered over the Internet and

coordinated by the Superintendent.

(11) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Subsection R277-419-5.

(12) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English learner plan.

(13) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(14) "Home school" means the formal instruction of children in their homes instead of in an LEA. The differences between a home school student and an online student include:

(a) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(b) an online student is:

(i) subject to laws and rules governing state and federal mandated tests; and

(ii) included in accountability measures;

(c) an online student receives instruction under the direction of highly qualified, licensed teachers who are subject to the licensure requirements of Rule R277-502 and fingerprint and background checks consistent with Rules R277-516 and R277-520;

(d) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53A, Chapter 17a, Minimum School Program Act.

(15) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(16) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(17) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(18) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(19) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(a) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(b) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(20) "Minimum School Program" means the same as that term is defined in Section 53A-17a-103.

(21) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;

(c) blended learning program; or

(d) competency based learning program.

(22) "Online learning program" means a program:

(a) that is under the direction of an LEA; and

(b) in which students receive educational services primarily over the internet.

(23) "Private school" means an educational institution that:

(a) is not an LEA;

(b) is owned or operated by a private person, firm, association, organization, or corporation; and

(c) is not subject to governance by the Board consistent with the Utah Constitution.

(24) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(25) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

(26) "Qualifying school age" means:

(a) a person who is at least five years old and no more than 18 years old on or before September 1;

(b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

(27) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:

(a) sickness;

(b) hospitalization;

(c) pending court investigation or action; or

(d) other extenuating circumstances beyond the control of the student.

(28) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.

(29) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.

(30) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

(31) "School" means an educational entity governed by an LEA that:

(a) is supported with public funds;

(b) includes enrolled or prospectively enrolled full-time students;

(c) employs licensed educators as instructors that provide instruction consistent with Section R277-502-5;

(d) has one or more assigned administrators;

(e) is accredited consistent with Section R277-410-3; and

(f) administers required statewide assessments to the school's students.

(32) "School day" means:

(a) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints described in Subsection (32)(b).

(b)(i) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(ii) Each day that satisfies hourly instruction time shall

count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

(33) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

(34) "School of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(35) "School year" means the 12 month period from July 1 through June 30.

(36) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

(37) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

(38) "SSID" means Statewide Student Identifier.

(39) "Unexcused absence" means an absence charged to a student when:

(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-4(8); and

(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

(40) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.

(41) "Youth in Custody (YIC)" means a person under the age of 21 who is:

(a) in the custody of the Department of Human Services;

(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.

(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.

(b) All schools shall submit a Clearinghouse report to the Superintendent.

(c) All schools shall employ at least one licensed educator and one administrator.

(2)(a) A student who is enrolled in a program is considered a member of a public school.

(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.

(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.

(d) A course taught at a program shall be credited to the appropriate school of enrollment.

(3) A private school or program may not be required to submit data to the Superintendent.

(4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

(1)(a) Except as provided in Subsection (1)(b), an LEA shall conduct school for at least 990 instructional hours and 180 school days each school year.

(b) an LEA may seek an exception to the number of school days described in Subsection (1)(a) for an individual student or school as provided for in Section R277-419-11.

(2) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.

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

(b) In the event that the Board is unable to meet in a timely manner, the Superintendent may issue a waiver following consultation with a majority of Board members.

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

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

(e) A waiver by the Board or Superintendent shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) A waiver shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

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

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board is encouraged to provide adequate school days and hours in the LEA's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

(6) To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(7) An LEA shall ensure that:

(a) computerized or manually produced records for CTE programs are kept by teacher, class, and Classification of Instructional Program (CIP) code; and

(b) the records described in Subsection (7)(a) clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(8) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

(9) Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;

(b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and

(c) schools shall continue instructional activities throughout required calendared instruction days.

(10) An LEA shall employ an independent auditor, under

contract, to:

(a) annually audit student accounting records; and

(b) report the findings of the audit to:

(i) the LEA board; and

(ii) the Finance and Statistics Section of the Board.

(11) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office and published under the heading of APP C-5.

(12) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Sections R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);

(d) is a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury;

(II) illness;

(III) surgery;

(IV) suspension;

(V) pregnancy;

(VI) pending court investigation or action; or

(VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA, other than the Utah Electronic High School, that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school

year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

(i) 170 days; plus

(ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(5) For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

(8) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(9) The sum of regular and resource special education membership days may not exceed 360 days.

(10) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53A-11-102 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53A-2-206(8);

(iv) Electronic High School courses for credit which meet curriculum requirements, consistent with the student's SEOP/Plan for College and Career Readiness and following written school counselor approval; or

(v) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53A-17a-106.

R277-419-8. Reporting Requirements.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

R277-419-9. High School Completion Status.

(1) An LEA shall account for the final status of all students who enter high school (grades 9-12) whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Subsection R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(b) completers are students who have not satisfied Utah's requirements for graduation but who:

(i) are in membership in twelfth grade on the last day of the school year; and

(ii)(A) meet any additional criteria established by an LEA consistent with its authority under Section R277-705-4;

(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: http://www.schools.utah.gov/sars/Laws.aspx and the Utah State Board of Education;

(C) meet any criteria established for special education students under Subsection R277-700-8(5); or

(D) pass a General Educational Development (GED) test with a designated score;

(c) continuing students are students who:

(i) transfer to higher education, without first obtaining a diploma;

(ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or

(iii) age out of special education;

(d) dropouts are students who:

(i) leave school with no legitimate reason for departure or absence;

(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);

(iii) are expelled and do not re-enroll in another public education institution; or

(iv) transfer to adult education;

(e) an LEA shall exclude a student from the cohort calculation if the student:

(i) transfers out of state, out of the country, to a private school, or to home schooling;

(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;

(iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(iv) dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.

(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Section R277-484-3.

(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Section R277-484-3.

(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.

(c) The Superintendent shall include a student in a school's graduation rate if:

(i) the school was the last school the student attended before the student's expected graduation date; and

(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).

(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(e) A student's graduation status will be attributed to the school attended in their final cohort year.

(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(i) school with an attached graduation status for the final cohort year;

(ii) school with the latest exit date;

(iii) school with the earliest entry date;

(iv) school with the highest total membership;

(v) school of choice;

(vi) school with highest attendance; or

(vii) school with highest cumulative GPA.

(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.

(1)(a) Pursuant to Section 53A-1-603.5, an LEA shall:

(i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and

(ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

(b) The unique student identifier:

(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;

(ii) may not be the student's social security number or contain any personally identifiable information about the student.

(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.

(3) The Superintendent and LEAs shall track students and maintain data using students' legal names.

(4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.

(5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.

(6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Variances.

(1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.

(b) The time an excepted student is required to attend school shall be established by the student's IEP or SEOP/Plan for College and Career Readiness.

(2)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency/activity time as part of the minimum required time to qualify for full Minimum School Program funding.

(3)(a) To provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in Subsection R277-419-2(32), are satisfied.

(b) A school may conduct parent-teacher and Student Education Plan (SEP) conferences during the school day.

(c) Parent-teacher and SEP conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(e) An LEA may designate no more than 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If instruction days are designated for kindergarten assessment:

(i) an LEA shall designate the days in an open meeting;

(ii) an LEA shall provide adequate notice and explanation

to kindergarten parents well in advance of the assessment period;

(iii) qualified school employees shall conduct the assessment consistent with Section 53A-3-410; and

(iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

(h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

(4) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment, pupil accounting

October 11, 2016 **Art X Sec 3**
Notice of Continuation September 14, 2012 **53A-1-401**
53A-1-402(1)(e)
53A-1-404(2)
53A-1-301(3)(d)
53A-3-404
53A-3-410

R277. Education, Administration.
R277-421. Out-of-State Tuition Reimbursement.
R277-421-1. 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) Section 53A-2-204, which outlines when a school district may pay out-of-state tuition for a resident student to attend a school district out of state.

(2) The purpose of this rule is to establish procedures for:

(a) obtaining Board approval for reimbursement of out-of-state tuition expenses;

(b) calculating reimbursement costs; and

(c) recording out of state students in district records.

R277-421-2. Definitions.

(1) "ADM" means average daily membership.

(2) "Minimum school program" or "MSP" means the same as that term is defined in Section 53A-17a-103.

(3) "NESS" means the Necessarily Existent Small Schools Fund.

(4) "Utah eTranscript and Records Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education districts and the Superintendent, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(5) "WPU" means the weighted pupil unit.

R277-421-3. Board Review of Out-of-State Tuition Agreements.

(1) A district shall submit to the Superintendent an agreement to pay tuition to an out-of-state district in accordance with Subsection 53A-2-204(1) by June 30.

(2) A district requesting reimbursement for excess tuition costs under Subsection 53A-2-204(3) shall submit a request to the Superintendent by June 30 including:

(a) an estimate of ADM for out of state students for the upcoming school year; and

(b) an estimate of tuition payment amounts for the upcoming school year.

(3)(a) The Board shall review a request submitted under Subsection (2) no later than August 30.

(b) The Board may deny a request submitted under Subsection (2) if there are insufficient funds to cover the reimbursement.

R277-421-4. Calculation of Out-of-State Tuition Reimbursement.

(1) The Superintendent shall calculate out-of-state reimbursement to a district by subtracting state funds that are calculated based on the WPU generated by an out-of-state resident student's ADM from the total tuition payment per student:

(a) Kindergarten WPU;
(b) Grade 1-12 WPU;
(c) Professional Staff Costs;
(d) NESS;
(e) District Administrative Costs;
(fi) Class-Size Reduction;
(g) Flexible Allocation;
(h) Gifted and Talented program;
(i) K-3 Reading Improvement program;
(j) Voted and Board Local Levy Guarantee programs; and

(k) Applicable Special Education programs.

(2) A district shall not include out-of-state tuition payments in any other MSP formula.

(3) The Superintendent may include in a calculation under Subsection (1) mileage costs reimbursed by a district to parents for transporting students to the nearest bus stop in accordance with Section R277-600-7.

(4) The Superintendent shall reserve the estimated funds identified by a district under Subsection R277-421-3(2)(a) from the new year NESS appropriation, and pay Board-authorized reimbursement payments from reserved funds.

R277-421-5. Recording Student Membership for Out-of-State Students.

(1) A district shall record student membership for students receiving out-of-state tuition reimbursement in accordance with District enrollment and membership policies.

(2) A district shall report students in UTREx for whom they are paying out-of-state tuition using codes identified by the Superintendent.

(3) A district shall report ADM for students attending school out-of-state pursuant to a tuition agreement under Section 53A-2-204 in the same manner as the district calculates ADM for students attending the district's schools.

KEY: out-of-state, tuition, reimbursements
October 11, 2016 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-438. Dual Enrollment.
R277-438-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-1-402(1)(b), which directs the Board to establish rules and minimum standards for access to programs;

(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities; and

(d) Section 53A-11-102.5, which governs dual enrollment.

(2) The purpose of this rule is to provide consistent statewide procedures and criteria for a home school and private school student's participation in a public school course, co-curricular activity, or program.

R277-438-2. Definitions.

(1) "Co-curricular activity" means a school district or school activity, course, or experience that includes a required regular school day component and an after school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair.

(2) "Dual enrollment student" means a student who is enrolled simultaneously in:

(a) a private school or home school; and

(b) a public school.

(3) "Eligibility" means a student's fitness and availability to participate in a school course, activity, or program governed by this rule that is determined by a number of factors, including:

(a) residency;

(b) scholarship;

(c) age; and

(d) the number of semesters of participation in a particular course, activity, or program.

(4) "Full-time student" means a student earning the school district designated number and type of credits required for participation in a course, activity, or program in the school district in which the student's parent resides.

(5) "Home school" means a school in the state comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

(6) "Private school" means a school in the state that:

(a) is maintained by a private individual or corporation;

(b) is maintained and operated not at public expense;

(c) is generally supported, in part at least, by tuition fees or charges;

(d) operates as a substitute for, and gives the equivalent of, instruction required in a public school;

(e) employs a teacher able to provide the same quality of education as a public school teacher;

(f) is established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(g) is licensed as a business by the Department of Commerce.

(7)(a) "Resident school" means a public school:

(i) that is under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards; and

(ii) within whose boundaries a student's custodial parent resides.

(b) "Resident school" does not mean a charter school or online school.

(8) "Student participation fee" means a fee charged to all participating students by the resident school for enrollment in a course, program, or co-curricular school activity consistent with

Rule R277-407.

R277-438-3. Private and Home School Student Participation in a Public School Course, Co-curricular Activity, or Program.

(1) A student who is exempt from compulsory public school education by a local school board for instruction in a private or home school may enroll in the student's resident school as a dual enrollment student and participate in a course, co-curricular activity, or program at the student's resident school if the student takes courses comparable to resident school courses or earns credit under options outlined in Section R277-700-6 in at least as many of the designated courses as required by the local school board of a student for participation in the course, co-curricular activity, or program.

(2) A public school that is not the student's resident school may allow a private or home school student to enroll in the public school, including in a single course or program, as a dual enrollment student, at the discretion of the public school.

(3) A dual enrollment student is eligible to participate in a course, co-curricular activity, or program:

(a) consistent with the eligibility standards for a full-time student, including providing a report card and citizenship information to the resident school or other school described in Subsection (2) upon request;

(b) in accordance with Section 53A-11-102.5; and

(c) in accordance with the provisions of Subsection 53A-11-102.6(2)(d).

R277-438-4. Fees for Private and Home School Students.

A school or school district shall waive a student participation fee for a dual enrollment private or home school student if:

(1) the student is eligible; and

(2) the parent provides required documentation under Section 53A-12-103 and Rule R277-407, School Fees.

R277-438-5. Miscellaneous Issues.

(1) A dual enrollment student attending an activity or a portion of a school day under Section 53A-11-102.5 is subject to the same behavior and discipline rights and requirements of a full-time student.

(2) A dual enrollment student who attends an activity or a portion of the school day is subject to the administrative scheduling and teacher discretion of the public school.

(3)(a) A dual enrollment student with a disability may participate as a dual enrollment student consistent with law, this rule and 34 CFR 300.450 through 300.455.

(b) A public school that enrolls a dual enrollment student shall prepare an IEP for a student described in Subsection (3)(a) prior to the student's participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students.

(c) A student with a disability seeking dual enrollment is entitled to services for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP team.

(d) Decisions about the scheduling and manner of services provided is the responsibility of the enrolling public school and school district personnel.

(e) A school or a school district is not prohibited from providing a service to a student who is not enrolled full time in excess of those required by this section.

KEY: public education, dual enrollment
December 8, 2015 Art X Sec 3
Notice of Continuation October 14, 2016 53A-1-402(1)(b)
53A-11-102.5

R277. Education, Administration.
R277-530. Utah Effective Educator Standards.
R277-530-1. 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) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.

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

(a) statewide effective teaching standards for Utah public education teachers;

(b) statewide educational leadership standards for Utah public education administrators; and

(c) statewide educational school counselor standards for Utah public education school counselors.

R277-530-2. Definitions.

(1) "Educator" means an individual licensed by the Board under Section 53A-6-103.

(2) "School administrator" means an educator serving in a position that requires a Utah Educator License with an Educator Leadership license area of concentration and who supervises Level 2 educators.

(3) "The Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards described in R277-530-5;

(b) the Educational Leadership Standards described in R277-530-6; and

(c) the Educational School Counselor Standards described in R277-530-7.

R277-530-3. Board Expectations for Effective Teaching, Educational Leadership, and Educational School Counselor Standards.

(1) The Board hereby establishes the Effective Educator Standards as the foundation of educator development, which includes:

(a) alignment of teacher and school administrator preparation programs;

(b) expectations for licensure; and

(c) the screening, hiring, induction, and mentoring of beginning teachers, school administrators, and other licensed educators.

(3) The Board uses the Effective Educator Standards to direct and ensure the implementation of Utah's Core Standards.

(4) The Board relies on the Effective Educator Standards as the basis for an evaluation system and tiered-licensing system.

(5) The Board's model educator assessment system, for use by LEAs, is based on the Effective Educator Standards.

(6) The Board provides resources, including professional learning, which assist LEAs in integrating the Effective Educator Standards into educator practices.

R277-530-4. LEA Responsibilities for Effective Educator Standards.

(1) An LEA shall develop policies to support educators, school administrators, and school counselors in implementation of the Effective Educator Standards.

(2) An LEA shall develop professional learning experiences and professional learning plans for relicensure using the Effective Educator Standards to assess educator progress toward implementation of the standards.

(3) An LEA shall adopt formative and summative educator assessment systems based on the Effective Educator Standards to facilitate educator growth toward expert practice.

(4) An LEA shall use the Effective Educator Standards as a basis for the development of a collaborative professional culture to facilitate student learning.

(5) An LEA shall implement induction and mentoring activities for beginning teachers and school administrators that support implementation of the Effective Educator Standards.

R277-530-5. Effective Teaching Standards.

(1) The Effective Teaching Standards focus on the high-leverage concepts of:

(a) personalized learning for diverse learners;

(b) a strong focus on application of knowledge and skills;

(c) improved assessment literacy;

(d) a collaborative professional culture; and

(e) leadership roles for teachers.

(2) Utah educators shall demonstrate the following skills and work functions designated in the following ten standards:

(a) Learner Development - An educator understands cognitive, linguistic, social, emotional, and physical areas of student development;

(b) Learning Differences - An educator understands individual learner differences and cultural and linguistic diversity;

(c) Learning Environments - An educator works with learners to create environments that support individual and collaborative learning, encouraging positive social interaction, active engagement in learning, and self motivation;

(d) Content Knowledge - An educator understands the central concepts, tools of inquiry, and structures of the discipline;

(e) Assessment - An educator uses multiple methods of assessment to engage learners in their own growth, monitor learner progress, guide planning and instruction, and determine whether the outcomes described in content standards have been met;

(f) Instructional Planning - An educator plans instruction to support students in meeting rigorous learning goals by drawing upon knowledge of content areas, core curriculum standards, instructional best practices, and the community context;

(g) Instructional Strategies - An educator uses various instructional strategies to ensure that all learners develop a deep understanding of content areas and their connections, and build skills to apply and extend knowledge in meaningful ways;

(h) Reflection and Continuous Growth - An educator is a reflective practitioner who uses evidence to continually evaluate and adapt practice to meet the needs of each learner;

(i) Leadership and Collaboration - An educator is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success; and

(j) Professional and Ethical Behavior - An educator demonstrates the highest standards of legal, moral, and ethical conduct as required in the Utah Educator Professional Standards described in Rule R277-515.

R277-530-6. Educational Leadership Standards.

(1)(a) The Board expects that school administrators shall meet the standards of effective teaching and have the knowledge and skills to guide and supervise the work of educators, lead the school learning community, and manage the school's learning environment in order to provide effective, high quality instruction to all of Utah's students.

(b) The Educational Leadership Standards focus on:

(i) visionary leadership;

(ii) advocacy for high levels of student learning;

(iii) leading professional learning communities; and

(iv) the facilitation of school and community collaboration.

(2) In addition to meeting the standards of an effective teacher, school administrators shall demonstrate the following traits, skills, and work functions designated in the following six standards:

(a) Visionary Leadership - A school administrator promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is largely shared and supported by stakeholders;

(b) Teaching and Learning - A school administrator promotes the success of every student by advocating, nurturing and sustaining a school focused on teaching and learning conducive to student, faculty, and staff growth;

(c) Management for Learning - A school administrator promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment;

(d) Community Collaboration - A school administrator promotes the success of every student by collaborating with faculty, staff, parents, and community members, responding to diverse community interests and needs and mobilizing community resources;

(e) Ethical Leadership - A school administrator promotes the success of every student by acting with, and ensuring a system of, integrity, fairness, equity, and ethical behavior; and

(f) Systems Leadership - A school administrator promotes the success of every student by understanding, responding to, and influencing the interrelated systems of political, social, economic, legal, policy, and cultural contexts affecting education.

R277-530-7. Educational School Counselor Standards.

In addition to meeting the Effective Teaching Standards described in Section R277-530-5 and the Educational Leadership Standards described in Section R277-530-6, an educational school counselor shall demonstrate the following traits, skills, and work functions designated in the following seven standards:

(1) Collaboration, Leadership and Advocacy - An educational school counselor is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success;

(2) Collaborative Classroom Instruction - An educational school counselor delivers a developmental and sequential guidance curriculum prioritized according to the results of the school needs assessment;

(3) The Plan for College and Career Readiness Process - An educational school counselor implements the individual planning component by guiding individuals and groups of students and their parents or guardians through the development of educational and career plans;

(4) Systemic Approach to Dropout Prevention with Social and Emotional Supports - An educational school counselor provides responsive services through the effective use of individual and small-group counseling, consultation and referral skills and implements programs for student support in dropout prevention;

(5) Data-Driven Accountability and Program Evaluation - An educational school counselor collects and analyzes data to guide program direction and emphasis;

(6) Systemic School Counseling Program Management - An educational school counselor is involved in management activities that establish, maintain and enhance the total school counseling program; and

(7) Professional and Ethical Behavior - An educational

school counselor demonstrates the highest standard of legal, moral and ethical conduct, as required in the Utah Educator Professional Standards described in R277-515.

KEY: educators, effectiveness, leadership, standards
October 11, 2016 Art X Sec 3
Notice of Continuation August 15, 2011 53A-1-402(1)(a)(i) and (ii)
53A-1-401

R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. 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;

(c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and

(d) Section 53A-8a-301, which directs that the Board adopt rules to guide school district employee evaluations.

(2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.

(3) The process shall:

(a) focus on the improvement of high quality instruction and improved student achievement;

(b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-2. Definitions.

(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.

(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.

(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.

(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

(5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

(6) "School administrator" means an educator:

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

(7) "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.

(8) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

(9) "Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards established in Section R277-530-5;

(b) the Educational Leadership Standards established in Section R277-530-6; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

(1)(a) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

(b) A school district's educator evaluation system shall conform to the framework no later than the 2015-2016 school year.

(2) A school district shall:

(a) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;

(b) establish and articulate performance expectations individually for all licensed school district educators;

(c) use valid and reliable measurement tools including, at a minimum:

(i) observations of instructional quality;

(ii) evidence of student growth;

(iii) parent and student input; and

(iv) other indicators as determined by the school district.

(d) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;

(e) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System; and

(f) use valid, reliable, and research-based measurements that shall:

(i) employ a variety of measurement tools;

(ii) measure student growth for educators;

(iii) provide evaluation for non-instructional licensed educators and administrators; and

(g) provide both formative and summative evaluation data.

(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

(4) A school district shall discuss, collaborate, and protect the confidentiality of educator data in the evaluation process.

(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process;

(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences; and

(c) A school district evaluation system shall protect personal data gathered in the evaluation process.

(6) A school district evaluation system shall provide support for instructional improvement, including:

(a) assessing the professional learning needs of educators; and

(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(10) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.

(11) A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student growth score; and

(c) other measures as determined by the school district, including data required from student/parent input.

(12) The Board shall determine weightings for specific educator performance criteria to be used in the school district's evaluation system.

(13) A school district evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(14) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(15) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

(16) A school district may include additional components in its evaluation system.

(17) A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board for review and approval.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

(1) The Board establishes a state evaluation advisory committee to provide ongoing review and support for school districts as school districts develop and implement evaluation systems consistent with the law (2) and this rule.

(2) The Committee, described in Subsection (1), shall:

(a) analyze school district evaluation data for purposes of:

(i) reporting;

(ii) assessing instructional improvement; and

(ii) assessing student achievement;

(b) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement; and

(c) review school district educator evaluation plans for alignment with Board requirements.

(2) The Superintendent, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

(3) The Superintendent shall evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems.

(4) The Superintendent shall provide professional learning and technical support to school districts to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

R277-531-5. Implementation.

(1) Each school district shall:

(a) have an educator evaluation committee;

(b) design the required evaluation program, including pilot programs as desired; and

(c) report educator effectiveness data to the Superintendent annually on or before June 30.

(2) A school district shall implement an employee compensation system no later than the 2016-2017 school year

that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601(2).

KEY: educators, evaluations, requirements
October 11, 2016 Art X Sec 3
Notice of Continuation August 15, 2016 53A-1-402(1)(a)(i)
53A-1-401

R277. Education, Administration.
R277-604. Private School, Home School, Electronic High School (EHS), and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests.
R277-604-1. Definitions.

A. Utah Basic Skills Competency Test (UBSCT) means the test required under Section 53A-1-611 for Utah students seeking a high school diploma (suspended through at least the 2011-2012 school year).

B. "Private school" means a school that is not a public school but:

(1) has a location or space in Utah where teachers have regularly scheduled face-to-face classes with students;

(2) has a current business license through the Utah Department of Commerce;

(3) is accredited through the Northwest Accreditation Commission or another regional accrediting agency;

(4) has and makes available a written policy for maintaining and securing student records;

(5) charges tuition generally consistent with other private schools in Utah; and

(6) employs teachers with licenses, credentials or demonstrable skills and expertise for instructing students in Core Curriculum courses or areas.

C. "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under 53A-11-102.

D. "Public school achievement test" means a standardized test which measures or attempts to measure the level of performance which a student has attained in one or more courses of study. Achievement tests shall mean criterion-referenced tests consistent with 53A-1-602(3)(b)(c) and (d).

R277-604-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-1-603(1)(a) which directs the Board to require school districts to implement the Utah Performance Assessment System for Students.

B. The purpose of this rule is:

(1) to provide opportunities for Utah private school students and home school students who are Utah residents, and Utah students attending BIA schools to participate in U-PASS;

(2) to maintain the integrity and security of U-PASS;

(3) to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, and Utah students attending BIA schools to participate in U-PASS if they so desire; and

(4) to protect the public investment in U-PASS by making assessments available to students who are not funded by the public education system through fair, reasonable, and consistent practices.

R277-604-3. Private Schools.

A. Private school students who are Utah residents, as defined under 53A-2-201, may be allowed to participate in U-PASS.

B. Private school students who are not Utah residents may participate in U-PASS only by payment in advance of the full cost of individual assessments as determined by local board policy.

C. Private schools that are interested in participating in U-PASS may, at the public school district's discretion, do so only in the public school district in which the private school is located.

(1) School districts shall determine at which public

schools within the district private school students may take achievement tests.

(2) A private school may request from the school district in which the private school is located an annual schedule of U-PASS dates, the locations at which private schools may be tested and written policies for private school student participation. An annual U-PASS schedule may be available online on school district websites.

D. School district policies shall include:

(1) reasonable costs for the participation of Utah private school students in U-PASS to be paid in advance by either the student or the school;

(2) an explanation of reasonable costs including costs for materials, scoring, reporting, and any state-related costs as determined by the state, to be passed on to the state. School district administration costs, determined by local boards, shall remain in the district.

(3) notice to private school administrators of any required private school administrator participation in monitoring or proctoring of tests;

(4) reasonable time lines for private school requests for participation and school district/school response;

(5) limits, if any, of numbers of non-public students that can be accommodated by the public school for all tests; and

(6) written notice to private schools of testing rules, including required identification for staff and students of implements or materials that private schools or private school students may or may not bring or use for each test.

R277-604-4. Home School Students.

A. Home school students who are Utah residents, as defined under 53A-2-201, shall be allowed to participate in U-PASS as provided in this rule.

B. Home school students shall be allowed to participate in U-PASS only if they have satisfied the home schooling requirements of 53A-11-102.

C. Home school student participation:

(1) Elementary-age home school students who desire to participate in U-PASS may do so only in the public school district in which the home school student's parent/legal guardian resides.

(2) Secondary home school students who desire to participate in U-PASS may do so only in the public school district in which the home school student's parent/legal guardian resides only if the student is enrolled in one or more Core program(s) or course(s) at the resident public school.

(3) School districts shall determine at which public school(s) within the district qualifying home school students may take achievement tests.

(4) A home school student/parent may request from the school district in which the home school student/parent resides an annual schedule of U-PASS dates, the locations at which home school students may be tested and written policies for home school student participation.

D. School district policies shall include:

(1) any costs required from traditional students.

(2) notice to home school students/parents of any required parent/adult participation in monitoring or proctoring of tests;

(3) reasonable time lines for home school requests for participation and school district/school response;

(4) limits, if any, of numbers of non-public students that can be accommodated by the public school for all tests; and

(5) written notice to home school students/parents of testing rules, including required identification and proof of residency for adults and students and implements or materials that home school students may or may not bring or use for each test.

E. The USOE shall absorb the costs for testing qualifying (enrolled in one or more Core program(s) or course(s) at the public school) home school students unless or until the number of home school students requesting testing in all districts exceeds two percent of the public education students enrolled in the state.

R277-604-5. Utah Electronic High School (EHS) Students.

A. EHS students may participate in testing in the school district and school of residence, consistent with Section 53A-2-201, if:

(1) the student has been enrolled in EHS by the school counselor consistent with the student's SEOP; and

(2) the student has met all requirements and standards for Utah home school students.

B. The USOE shall absorb the costs for testing of Utah EHS students until and unless the number of EHS students exceeds two percent of the number of traditionally enrolled Utah public school students.

R277-604-6. Bureau of Indian Affairs (BIA) Students.

A. BIA school administrators shall be responsible to meet all U-PASS requirements for all Utah students.

B. Materials and training shall be provided to BIA schools from the public school district in which the school is located on the schedule that applies to Utah school districts.

C. BIA school administrators shall be notified of all information and training by the public school district in which the school is located.

KEY: home school, private school, electronic high school, achievement tests

August 9, 2010 **Art X Sec 3**

Notice of Continuation October 14, 2016 **53A-1-401(3)**

53A-1-603(1)(a)

R277. Education, Administration.
R277-605. Coaching Standards and Athletic Clinics.
R277-605-1. Definitions.

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

B. "Utah High School Activities Association (UHSAA)" is an organization whose purpose is to administer and supervise interscholastic activities among its member schools according to the Association constitution and by-laws.

R277-605-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs.

B. The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.

R277-605-3. Athletics and the Core Curriculum.

A. Schools and coaches shall strictly adhere to both the letter and the spirit of the UHSAA by-laws, policies, regulations, and interpretations for high school sports programs.

B. Schools are prohibited from scheduling full-year physical education or athletic fitness and movement classes for specific school teams. In schools where in-season fitness and movement classes are scheduled, the classes shall not be used to violate the starting and stopping dates for practice and competitive play as prescribed by the UHSAA.

C. High school competitive sports programs shall be supplementary to the high school curriculum.

R277-605-4. Coaches and School Activity Leaders as Supervisors and Role Models.

A. Coaches and other designated school leaders shall diligently supervise their players at all times while on school-sponsored activities. This includes supervision on the field, court, or other competition or performance sites, in locker rooms, in seating areas, in eating establishments, in lodging facilities, and while traveling.

B. A coach or other designated school leader shall be an exemplary role model and shall not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.

C. Coaches, assistants and advisors shall act in a manner consistent with Section 53A-11-908 and shall not use foul, abusive, or profane language while engaged in school related activities; nor permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

D. All coaches shall be appropriately certified as provided in R277-517.

R277-605-5. Athletic and Activity Clinics.

A. School personnel, activity leaders, coaches, advisors, and other personnel shall not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.

B. Required or voluntary participation in summer or other off-season clinics, workshops, and leagues shall not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.

C. A summer workshop or clinic conducted by a school for any sport or activity shall be scheduled and held consistent with UHSAA bylaws and policies. These bylaws are available in every secondary school principal's office, at school district offices, at the Utah State Office of Education, and from the UHSAA for a minimal cost.

KEY: extracurricular activities

March 5, 2002	**Art X Sec 3**
Notice of Continuation October 14, 2016	**53A-1-401(3)**
	53A-1-402(1)(b)

R277. Education, Administration.
R277-606. Dropout Prevention and Recovery Program.
R277-606-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-15-1903, which requires the Board to develop rules to set policies related to a dropout prevention and recovery program;

(c) 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.

(2) The purpose of this rule is to:

(a) develop policies related to an LEA's dropout prevention and recovery program; and

(b) set reporting requirements for LEAs with a dropout prevention and recovery program.

R277-606-2. Definitions.

For purposes of this rule:

(1) "Attainment goal" has the same meaning as that term is defined in Section 53A-15-1902.

(2) "Average daily membership" means the same as that term is defined in Section 53A-17a-103.

(3) "Cohort" means the same as that term is defined in Section 53A-15-1902.

(4) "College and career readiness work" means the same as that term is defined in Section 53A-15-1902.

(5) "Designated student" means a student:

(a)(i) who has withdrawn from a secondary school prior to earning a diploma;

(ii) who was dropped from average daily membership; and

(iii) whose cohort has not yet graduated; or

(b) who is at risk of meeting the criteria described in Subsection (5)(a), as determined by the student's LEA, using the risk factors described in Subsection (10).

(6) "Graduation rate" means the same as that term is defined in Section 53A-15-1902.

(7) "LEA" means the same as that term is defined in Section 53A-15-1902.

(8) "Nontraditional program" means the same as that term is defined in Section 53A-15-1902.

(9) "Proxy graduation rate" means a rate calculated:

(a) in a manner similar to the regular graduation rate for each year of grades 9 through 12;

(b) treating a student as having graduated if the student returned after each grade year; and

(c) treating a student as dropping out if the student:

(i) did not return after each year; or

(ii) the student did not have an acceptable exit code entered into the Board's UTREx system.

(10) "Risk factors" means:

(a) low academic performance, as measured by grades, test scores, or course failure;

(b) poor behavior, as measured by office disciplinary referrals, suspensions, or expulsions; and

(c) absenteeism, whether excused or unexcused absences, and including days tardy and truant.

(11) "Third party" means the same as that term is defined in Section 53A-15-1902.

R277-606-3. LEA Dropout Prevention and Recovery Programs.

(1) Beginning with the 2016-17 school year, an LEA that serves students in grades 9, 10, 11, or 12 shall provide a dropout prevention and recovery program for a designated student with the dropout prevention and recovery services described in Section 53A-15-1903.

(2) An LEA that enrolls a designated student in a dropout prevention and recovery program shall:

(a) develop a written policy that describes:

(i) how the LEA or the LEA's third party will measure and report if the designated student made a year's worth of progress toward an attainment goal as required in Section R277-606-4; and

(ii) how membership days will be determined for the designated student in accordance with the LEA's established school schedule and enrollment policies; and

(b) indicate that the designated student is enrolling in the LEA's dropout prevention and recovery program in accordance with current UTREx specifications.

(3)(a) If a designated student chooses to enroll in a dropout prevention and recovery program, the LEA, in consultation with the designated student, shall prepare, in accordance with the LEA's written policy described in Subsection (2), a learning plan for the designated student that includes an attainment goal for the designated student.

(b) If an LEA is required to contract with a third party to provide dropout prevention and recovery services, the third party shall:

(i) work with the LEA to prepare a learning plan for a designated student described in Subsection (3)(a);

(ii) regularly report a designated student's progress toward the designated student's attainment goal in accordance with the LEA's written policy described in Subsection (2); and

(iii) maintain documentation required by the LEA for the LEA to meet the requirements of Subsection R277-606-4(4).

(4)(a) If a designated student is a student with a disability and an LEA provides dropout prevention and recovery services without using a third party, the LEA shall:

(i) prepare an IEP or Section 504 plan for the designated student; and

(ii) provide the dropout prevention and recovery services in accordance with the designated student's IEP or Section 504 plan.

(b) If a designated student is a student with a disability and an LEA contracts with a third party to provide dropout prevention and recovery services to the designated student:

(i) the LEA shall prepare an IEP or Section 504 plan for the designated student; and

(ii) the third party shall provide the dropout prevention and recovery services to the designated student in accordance with the designated student's IEP or Section 504 plan.

R277-606-4. Reporting Requirements and Audits.

(1)(a) Beginning with the 2016-17 school year, on or before August 1, 2017 and on or before August 1 each year thereafter, an LEA shall submit a report to the Superintendent on the LEA's dropout prevention and recovery services.

(b) The report described in Subsection (1)(a) shall include:

(i) the information described in Section 53A-15-1903;

(ii) the total number of designated students in the LEA; and

(iii) if applicable, the name of a third party the LEA is contracting with to provide dropout prevention and recovery services.

(2) A third party working with an LEA on the LEA's dropout prevention and recovery program shall report any information requested by the LEA including any information required for the LEA to submit a report described in Subsection (1).

(3) The Superintendent shall:

(a) review LEA reports described in Subsection (1);

(b) by April 1 each year, inform an LEA that the LEA is required to enter into a contract with a third party as described in Subsection 53A-15-1903(3); and

(c) ensure that an LEA described in Subsection 53A-15-1903(3) and Subsection R277-606-3(3) contracts with a third party as required in Section 53A-15-1903 and Section R277-606-3.

(4)(a) An LEA shall maintain documentation to comply with the requirements of Section 53A-15-1903 and this rule.

(b) The Board or the Superintendent may request an audit of an LEA's dropout prevention and recovery program.

KEY: dropout, prevention and recovery, pupil accounting
October 11, 2016 **Art X, Sec 3**
53A-1-401
53A-15-1903

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. Definitions.

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

B. "Discipline" includes:

(1) imposed discipline; and

(2) self-discipline.

C. "Disruptive student behavior" includes:

(1) the grounds for suspension or expulsion described in Section 53A-11-904; and

(2) the conduct described in Subsection 53A-11-908(2)(b).

D. "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others, and the intervention is not for disciplinary purposes.

E. "Functional Behavior Assessment (FBA)" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

F. "Immediate danger" means the imminent danger of physical violence/aggression towards self or others likely to cause serious physical harm.

G. "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

H. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

I. "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

J. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students.

K. "Program" means instructional or behavioral programs including those provided by contract private providers under the direct supervision of public school staff, that receives public funding or for which the USOE has regulatory authority.

L. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that defines hazing, bullying, cyber-bullying, and harassment, prohibits hazing and bullying, requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, emergency safety interventions, and harassment among school employees and students, and provides for enforcement through employment action or student discipline.

M. "Qualifying minor" means a school-age minor who:

(1) is at least nine years old; or

(2) turns nine years old at any time during the school year.

N. "School" means any public elementary or secondary school or charter school.

O. "School board" means:

(1) a local school board; or

(2) a local charter board.

P. "School employee" means:

(1) a school teacher;

(2) a school staff member;

(3) a school administrators; or

(4) any other person employed, directly or indirectly, by an LEA.

Q. "Seclusionary time out" means that a student is:

(1) placed in a safe enclosed area:

(a) by school personnel; and

(b) in accordance with the requirements of R392-200 and R710-4-3;

(2) purposefully isolated from adults and peers; and

(3) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

R. "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

S. "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

T. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

R277-609-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities, Subsection 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, Section 53A-15-603, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction, and Section 53A-11-901, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to outline requirements for school discipline plans and policies. The written policies shall include direction to LEAs to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-3. LEA Responsibility to Develop Plans.

A. Each LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

B. The plan described in R277-609-3A shall include:

(1) the definitions of Section 53A-11-910;

(2) written standards for student behavior expectations, including school and classroom management;

(3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;

(4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of:

(a) student behavior expectations;

(b) effective instructional practices for teaching and reinforcing behavior expectations;

(c) effective intervention strategies; and

(d) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) procedures for ongoing training of appropriate school personnel in:

(a) crisis intervention training;

(b) emergency safety intervention professional development; and

(c) LEA policies related to emergency safety interventions consistent with evidence-based practice;

(8) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(9) policies and procedures related to bullying, cyber-

bullying, harassment, hazing, and retaliation consistent with requirements of R277-613; and

(10) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(a) subject to the requirements of R277-609C, physical restraint except when a student:

(i) presents a danger of serious physical harm to self or others; or

(ii) is destroying property;

(b) prone, or face-down, physical restraint; supine, or face-up, physical restraint;

(c) physical restraint that obstructs the airway of a student, or any physical restraint that adversely affects a student's primary mode of communication;

(d) mechanical restraint, except those protective, stabilizing or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, including seatbelts or any other safety equipment when used to secure students during transportation;

(e) chemical restraint, except as:

(i) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(ii) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(f) subject to the requirements of R277-609, seclusionary time out, except when a student presents an immediate danger of serious physical harm to self or others.

(g) for a student with a disability, emergency safety interventions written into a student's individualized education program (IEP), as a planned intervention, unless school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in R277-608-4 have been attempted, a FBA has been conducted, and a positive behavior intervention plan based on data analysis has been written into the plan and implemented; and

(11) the policies and procedures explicitly include all the requirements in this rule.

C(1) All physical restraint must be immediately terminated when student is no longer an immediate danger to self or others, or if student is in severe distress.

(2) The use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria (as outlined in LEA policies) must be implemented.

(3) If a public education employee physically restrains a student:

(a) the school or the public education employee shall immediately notify the student's parent or guardian and school administration; and

(b) the public education employee may not use physical restraint on a student for more than 30 minutes.

(4) In addition to the notice described in R277-609-3C(3), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(5) An LEA may not use physical restraint as a means of discipline or punishment.

D(1) If a public education employee uses seclusionary time out, the public education employee shall:

(a) use the minimum time necessary to ensure safety;

(b) use a release criteria (as outlined in LEA policies);

(c) ensure that any door remains unlocked; and

(d) maintain the student within line of sight of the public education employee.

(2) If a student is placed in seclusionary time out:

(a) the school or the public education employee shall immediately notify:

(i) the student's parent or guardian; and

(ii) school administration; and

(b) the public education employee may not place a student in a seclusionary timeout for more than 30 minutes.

(3) In addition to the notice described in R277-609-3D(2), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(4) Seclusionary time may only be used for maintaining safety and a public education employee may not use seclusionary time out as a means of discipline or punishment.

E. A plan described in R277-609-3A shall also:

(1) provide direction for dealing with bullying and disruptive students;

(2) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(3) provide for identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

(4) designate to whom notices of disruptive and bullying student behavior shall be provided;

(5) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;

(6) include strategies to provide for necessary adult supervision;

(7) require that policies be clearly written and consistently enforced;

(8) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility; and

(9) provide notice to employees that violation of this rule may result in employee discipline or action.

F. A plan required under this R277-609-3:

(1) shall include gang prevention and intervention policies;

(2) shall account for an individual LEA's or school's unique needs or circumstances including the role of law enforcement and emergency medical services (EMS);

(3) may include the provisions of Subsection 53A-15-603(2); and

(4) shall provide for publication of notice to parents and school employees of policies by reasonable means.

R277-609-4. Implementation.

A. An LEA shall implement strategies and policies consistent with the LEA's plan required in R277-609-3A.

B. An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies. (Least Restricted Behavioral Interventions Technical Assistance Manual).

D(1) An LEA shall provide a formal written assessment of

a habitually disruptive student as part of a student's suspension or expulsion process that results in court involvement, once an LEA receives information from the court that disruptive student behavior will result in court action.

(2) An LEA shall use assessment information to connect parents and students with supportive school and community resources.

E. Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.

F. An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.

G. The LEA ESI Committee:

(1) shall include:

(a) at least two administrators;

(b) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

(c) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

(2) shall meet often enough to monitor the use of emergency safety intervention in the LEA;

(3) shall determine and recommend professional development needs; and

(4) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.

H. An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

I. The Superintendent shall define the procedures for the collection, maintenance, and review of records described in R277-609-4H.

J. An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

R277-609-5. Special Education Exception(s) to this Rule.

A. An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

B. The Superintendent shall periodically review:

(1) all LEA special education behavior intervention plans, procedures, or manuals; and

(2) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System (UPIPS).

R277-609-6. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. An LEA shall establish policies that:

(1) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

(2) provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(a) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(b) school resources available;

(c) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data; and

(d) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

C(1) When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than the end of the school day.

(2) If a crisis situation occurs and an emergency safety intervention is used, a school shall immediately notify:

(a) a student's parent or guardian; and

(b) school administration.

(3) In addition to the notice described in R277-609-6C(2), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(4) A notice described in R277-609-6C2 shall be documented within student information systems (SIS) records.

D(1) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.

(2) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.

(3) A parent or guardian may request a time to meet with school staff and administration to discuss the crisis situation.

R277-609-7. Model Policies.

A. The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

B. The Superintendent shall develop model policies required under R277-609-3A(10) to assist LEAs.

C. The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-8. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may disrupt state aid or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

September 3, 2015	**Art X Sec 3**
Notice of Continuation October 14, 2016	**53A-1-401(3)**
	53A-1-402(1)
	53A-15-603
	53A-11-901

R277. Education, Administration.
R277-711. High Quality School Readiness Expansion.
R277-711-1. 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;

(c) Section 53A-1b-204, which requires the Board to make rules to:

(i) implement a grant program for LEAs to increase capacity in high-quality school readiness programs; and

(ii) create a tool to determine quality of a school readiness program; and

(d) Section 53A-1b-205, which requires the Board to make rules to implement a grant program for home-based technology programs to provide high-quality school readiness programs.

(2) The purpose of this rule is to:

(a) designate the tool for the Superintendent to use in determining if a school readiness program is high quality; and

(b) designate procedures for an LEA to apply to the Board to receive grant money.

R277-711-2. Definitions.

(1) "Eligible LEA" means an LEA that provides a school readiness program that the Superintendent has determined to be a high-quality program consistent with procedures established in this Rule.

(2) "Program" means the high-quality school readiness expansion program established in Title 53A, Chapter 1b, Part 2.

R277-711-3. Grant Applications - Timelines.

(1) The Superintendent shall:

(a) develop a grant application that allows an LEA to apply to participate in the program; and

(b) make the grant application available on the Board's website.

(2) An LEA may apply for a grant described in Section 53A-1b-204 by submitting an application to the Superintendent on or before the date published on the Board's website.

(3)(a) An LEA may notify the Superintendent of the LEA's intention to apply for a grant at any time.

(b) If an LEA intends to be considered for a grant for the upcoming school year, the LEA shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for the LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the tool described in Section R277-711-4 to determine if the applying LEA is an eligible LEA.

(6) The Superintendent shall notify an eligible LEA of successful receipt of a grant by July 1.

R277-711-4. Superintendent and LEA Responsibilities - Tool to Determine Quality of an LEA School Readiness Program.

(1) The Superintendent shall create a tool to determine whether or not an LEA school readiness program may be designated as high quality.

(2) The tool described in Subsection (1) shall consist of the following components:

(a)(i) the Early Childhood Environmental Rating Scale (ECERS) observational tool for an observer to rate a program through a site visit; or

(ii) another observational tool that the Superintendent trusts to be a reliable tool;

(b) an application from the LEA containing the high quality components described in 53A-1b-105; and

(c) an on-site visit and interview with the Superintendent's designated staff.

(3) The Superintendent shall establish a scoring rubric for how the application will be evaluated, and make the rubric available to applicants.

(4) The Superintendent shall maintain a list of state-funded high-quality school readiness programs operating in each LEA's geographic boundaries, which have been designated as high quality through use of the tool.

(5) The Superintendent shall provide for a flag in a student's data file to indicate the type of state-funded high-quality school readiness program that the student participated in.

(6)(a) The Superintendent may require an LEA that receives program money to develop a corrective action plan and successfully implement the corrective action plan if the LEA fails to:

(i) comply with statutory provisions or the requirements of this Rule;

(ii) meet expected goals; or

(iii) maintain all the high-quality elements of the school readiness program.

(b) If an LEA fails to successfully implement a corrective action plan described in Subsection (6)(a), the Superintendent may discontinue or reduce funding of program grant monies to the LEA.

(7) The Superintendent shall administer the grant program for home-based technology providers as provided in Section 53A-1b-205.

(8) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53A-1b-208.

KEY: grants, school readiness program
October 11, 2016

Art X Sec 3
53A-1-401
53A-1b-204
53A-1b-205

R277. Education, Administration.
R277-712. Competency-based Grant Programs.
R277-712-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-15-1803, which requires the Board to:

(i) define outcome-based measures for each type of grant awarded to LEA's;

(ii) establish a grant application process;

(iii) establish a review committee; and

(iv) adopt metrics to analyze the quality of a grant application; and

(c) 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.

(2) The purpose of this rule is to:

(a) define outcome-based measures for each type of grant awarded to LEA's;

(b) establish a grant application process;

(c) establish a review committee; and

(d) adopt metrics to analyze the quality of a grant application.

R277-712-2. Definitions.

(1) "Advisory committee" means the advisory committee established by the Board in Section R277-712-3.

(2) "Grant program" means the same as that term is defined in Section 53A-15-1802.

R277-712-3. Competency-based Advisory Committee Membership and Duties.

(1) The advisory committee shall include the following ten individuals:

(a) the Deputy Superintendent of Instructional Services or the Deputy's designee, who is a non-voting member of the advisory committee;

(b) one member who is an expert in blended learning;

(c) one member who is an expert in STEM education;

(d) one member who is an expert in assessment of student learning;

(e) one member who is a former school district superintendent;

(f) one member who is a current school administrator;

(g) one member who is a current charter school administrator;

(h) one member who is a former LEA administrator;

(i) one member who is a current teacher; and

(j) one member who is a former teacher.

(2) In addition to the committee members described in Subsection (1), the advisory committee may select additional grant application reviewers to assist the advisory committee with the work described in Subsection (3).

(3) The advisory committee shall:

(a) establish metrics to analyze the quality of a grant application;

(b) review an LEA's planning grant application to determine whether the planning grant application:

(i) meets the criteria described in Section 53A-15-1804 and Section R277-712-5; and

(ii) should be selected by the Board as one of three LEAs to receive a planning grant;

(c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on grant applications to the Board for approval.

R277-712-4. Pre-grant Approval Requirements.

(1) Before an LEA submits a planning grant application to the advisory committee for approval by the Board, the LEA shall have at least two LEA representatives participate in the competency-based technical assistance training conducted by the Superintendent, including;

(a) the school district superintendent or charter school executive director; and

(b)(i) the LEA's curriculum director; or

(ii) the LEA's proposed competency-based education program manager.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the applying LEA may participate in the technical assistance training described in Subsection (1).

R277-712-5. Grant Application.

(1) An LEA may apply for a planning grant described in Section 53A-15-1804 by submitting an application to the Superintendent.

(2) The Superintendent shall:

(a) develop a grant application;

(b) set a deadline for the application to be submitted to the Superintendent; and

(c) make the grant application available to LEAs on the Board's website.

R277-712-6. Procedure and Requirements for Awarding a Planning Grant.

(1) The advisory committee and the Superintendent shall make recommendations to the Board based on:

(a) the criteria described in Subsection 53A-15-1804(2);

(b) the LEA's proposed budget for the LEA's competency-based program; and

(c) the LEA's outcome based measurements described in Subsection (2).

(2)(a) For a planning grant, an LEA shall include outcome-based measurements as part of the LEA's competency-based program to measure the performance of the LEA's plan.

(b) The outcome-based measurements described in Subsection (2)(a) shall include at least one measurement of student growth and proficiency.

(c) The outcome-based measurements described in Subsection (2)(a) may include:

(i) parent and student satisfaction with the LEA's competency-based program;

(ii) cost savings;

(iii) an increase in the LEA's graduation rate; and

(iv) number of credits earned by students through the competency-based program.

KEY: competency-based instruction, grant programs
October 11, 2016 **Art X Sec 3**
53A-15-1803
53A-1-401

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. 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) Subsection 53A-1-402(1), which directs the Board to adopt rules regarding services for persons with disabilities;

(c) Title 53A, Chapter 15, Part 3, Education of Children with Disabilities, which requires the Board to adopt rules regarding educational services to students with disabilities; and

(d) 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.

(2) The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-2. Incorporation of Special Education Rules Manual by Reference.

(1) This rule incorporates by reference the Special Education Rules manual dated August 12, 2016, which establishes policies and procedures for:

(a) appropriate and timely identification of a student with a disability;

(b) evaluation and classification of a student with a disability by qualified personnel;

(c) standards for services provided to a student with a disability;

(d) provision for multi-district programs for a student with a disability;

(e) provision for delivery of service responsibilities;

(f) certification and qualifications for instructional staff; and

(g) the state's implementation of federal special education programs, including IDEA.

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

(a) http://www.schools.utah.gov/sars/Laws.aspx; and

(b) the Utah State Board of Education.

R277-750-3. Standards and Procedures.

(1) The Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400 as the Board's rules for students with disabilities.

(2) The Superintendent and LEAs shall provide services to a student with a disability in accordance with:

(a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(b) this rule;

(c) the Special Education Rules, August 2016, included in the Special Education Rules manual described in R277-750-2; and

(d) the annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

KEY: special education

October 11, 2016	**Art X Sec 3**
Notice of Continuation August 15, 2016	**Title 15, Part 3**
	53A-1-402(1)
	53A-1-401

R277. Education, Administration.
R277-922. Digital Teaching and Learning Grant Program.
R277-922-1. 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 53A, Chapter 1, Part 15, Digital Teaching and Learning Grant Program, which requires the Board to:

(i) establish a qualifying grant program; and

(ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.

(2) The purpose of this rule is to:

(a) establish an application and grant review committee and process;

(b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

(1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:

(a) established by the Board as required in Section 53A-1-1506; and

(b) required to perform the duties described in R277-922-5.

(2) "LEA plan" has the same meaning as that term is defined in Section 53A-1-1502.

(3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.

(4) "Program" has the same meaning as that term is defined in Section 53A-1-1502.

(5) "Participating LEA" means an LEA that:

(a) has an LEA plan approved by the Board; and

(b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

(1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:

(a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) http://www.schools.utah.gov/edtech/; and

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

R277-922-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of $5,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53A-1-1405.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii) the school district superintendent or charter school executive director;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53A-1-1505.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the

Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop an LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53A-1-1504;

(b) a statement of purpose that describes the learning objectives, goals, measurable outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase on each school's performance on SAGE using a baseline of the school's 2015-16 SAGE proficiency scores by the end of the third year of the LEA's implementation of the program; or

(ii) a school level outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified by an LEA that may include:

(i) student achievement on statewide assessments;

(ii) cost savings and improved efficiency relating to instructional materials, facilities, and maintenance;

(iii) attendance;

(iv) discipline incidents;

(v) parental involvement;

(vi) citizen involvement;

(vii) graduation rates;

(viii) student enrollment in higher education;

(ix) dropout rates;

(x) student technology proficiency for college and career readiness;

(xi) teacher satisfaction and engagement; or

(xii) other school level outcomes approved by the advisory committee or the Board;

(d) an implementation process structured to yield an LEA's school level outcomes;

(e) a plan for infrastructure acquisition;

(f) a process for procurement and distribution of the goods and services an LEA intends to use as part of an LEA's implementation of the program;

(g) a description of necessary high quality digital instructional materials;

(h) a detailed plan for student engagement in personalized learning;

(i) technical support standards for implementation and maintenance of the program that:

(i) include support for hardware and Internet access; and

(ii) remove technical support burdens from the classroom teacher;

(j) proposed security policies, including security audits, student data privacy, and remediation of identified lapses;

(k) an inventory of an LEA's current technology resources, including software, and a description of how an LEA will integrate those resources into the LEA's implementation of the program;

(l) a disclosure by an LEA of the LEA's current technology expenditures;

(m) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

(n) a description of how an LEA will:

(i) provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching; and

(ii) provide special education students with appropriate software;

(o) a plan for digital citizenship curricula and implementation;

(p) a plan for how an LEA will ensure that schools use software programs with fidelity in accordance with:

(i) the recommended usage requirements of the software provider; and

(ii) the best practices recommended by the software or hardware provider; and

(q) a plan for how an LEA will monitor student and teacher usage of the program technology.

(2)(a) An LEA shall include the LEA's proposed implementation of the program over multiple years in the LEA plan.

(b) An LEA must demonstrate the financial ability to fully fund the LEA plan using both grant and non-grant funds.

(3) An LEA's approved LEA plan is valid for three years, and may be required to be reapproved by the advisory committee and the Board after three years of implementation.

(4) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA

would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

(1) to fund nontechnology programs;

(2) to purchase mobile telephones;

(3) to fund voice or data plans for mobile telephones; or

(4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

(1) review how the participating LEA:

(a) redirected funds through the participating LEA's implementation of the LEA plan; and

(b) made progress toward implementation; and

(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53A-1-1507 shall include a review of:

(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;

(b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs
October 11, 2016 **Art X Sec 3**
53A-1-401
Title 53A, Chapter 1, Part 15

R277. Education, Administration.
R277-924. Partnerships for Student Success Grant Program.
R277-924-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-4-307, which requires the Board to make rules to administer the Partnerships for Student Success Grant Program; and

(c) Subsection 53A-1-401(3), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) an eligible partnership to apply to the Board to receive grant money; and

(ii) the evaluation of an eligible partnership's use of grant money.

R277-924-2. Definitions.

(1) "Eligible partnership" means the same as that term is defined in Section 53A-4-302.

(2) "Eligible school feeder pattern" means the same as that term is defined in Section 53A-4-302.

(3) "Grant program" means the Partnerships for Student Success Grant Program established in Section 53A-4-303.

(4) "Lead applicant" means an LEA or local nonprofit organization designated by an eligible partnership to act as the lead applicant for a grant described in Title 53A, Chapter 4, Part 3, Partnerships for Student Success Grant Program and this Rule.

R277-924-3. Grant Application.

(1) The Superintendent shall:

(a) develop a grant application that allows an eligible partnership, through the lead applicant, to apply to participate in the grant program; and

(b) make the grant application available on the Board's website.

(2) An eligible partnership may apply for a grant described in Section 53A-4-303 by submitting an application to the Superintendent:

(a) on or before September 1, 2016; or

(b) on or before the date published on the Board's website.

(3)(a) An eligible partnership or lead applicant may notify the Superintendent of the eligible partnership's intention to apply for a grant at any time.

(b) If an eligible partnership intends to be considered for a grant for the upcoming school year, the eligible partnership shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for the LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the criteria described in Section R277-924-4 to determine if the applying partnership is an eligible partnership.

(6) The Superintendent shall notify the lead applicant of successful receipt of a grant by July 1.

R277-924-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award grants to eligible partnerships based on the amount of funding available for the grant program.

(2) The Superintendent shall award the grant described in Subsection (1) to an eligible partnership based on the following criteria:

(a) the percentage of students who live in families with an income at or below 185% of the federal poverty level enrolled in schools within the eligible school feeder pattern;

(b) the comprehensive needs assessment of the eligible partnership, including the shared goals, outcomes and measurement practices based on the unique community needs and interests;

(c) the proposed program services to be implemented based on the comprehensive needs assessment described in Subsection (2)(b), including how the eligible partnership's plan aligns with:

(i) the five- and ten-year plan to address intergenerational poverty described in Section 35A-9-303; and

(ii) if the eligible partnership has a low performing school within the eligible partnership's school feeder pattern, the school turnaround plans of the low performing schools;

(d) how the eligible partnership will:

(i) improve educational outcomes for low income students through the formation of cross-sector partnerships; and

(ii) improve efforts focused on student success;

(e) the outcome-based measures selected by the eligible partnership, including the eligible partnership's plan to:

(i) objectively assess the success of the eligible partnership's program design plan; and

(ii) make changes to the eligible partnership's plan based on the assessment described in Subsection (2)(e)(i);

(f) the strength of the eligible partnership's commitment to:

(i) the establishment and maintenance of data systems that inform program decisions;

(ii) sharing of information and collaboration with third party evaluators; and

(iii) meeting annual reporting requirements;

(g) the eligible partnership's budget, including:

(i) identifying the estimated cost per student for the program;

(ii) an explanation for each proposed expenditure and how each expenditure aligns with the eligible partnership's proposed program; and

(iii) providing matching funds as required in Section 53A-4-304.

(3) Additional points will be awarded to an eligible partnership that:

(a) includes a low performing school as defined in Section 53A-1-1202; or

(b) includes community and parent engagement as a part of the eligible partnership's plan.

(4) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53A-4-306.

KEY: Partnerships for Student Success, grant program, community, non-profit organizations
October 11, 2016 **Art X Sec 3**
53A-4-307
53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air pollutants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air pollutants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall

be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air pollutant types, and concentration of air pollutants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air pollutant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the

following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air pollutant of any of the following air pollutants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air pollutant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air pollutants not listed in (a) or (b) above.

(d) Air pollutants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air pollutant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (4) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air pollutants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment

is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Pollutants.

(1) Applicability. The owner or operator of a stationary source of air pollutants that reduces or eliminates air pollutants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if:

(a) the project does not increase the potential to emit of any air pollutant or cause emissions of any new air pollutant, and

(b) the director is notified of the change and the reduction of air pollutants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is

used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. General Approval Order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-410-5(1)(c)(ii) is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-5(1)(c)(ii) was conducted.

(e) A source that is subject to the requirements of R307-410-5(1)(c)(iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under R307-401-19(7)(b) shall meet the public notice requirements in R307-401-19(3).

(c) A general approval order shall be reviewed at least every three year. The review of the general approval order shall

follow the public notice requirements of R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by the approved general approval order. Modifications outside the scope authorized by the approved general approval order shall require a new application for either an individual approval order under R307-401-8 or a general approval order under R307-401-19.

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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 special management requirements for hazardous waste produced by conditionally exempt 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, wire, or metal pieces that may be combined together with bolts or soldering, for example radiators, scrap automobiles, 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.

R315-261-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in Subsection R315-261-2(b); or

(B) Recycled, as explained in Subsection R315-261-2(c); or

(C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(4) Sham recycled, as explained in Subsection R315-261-2(g)

(c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).

(1) Used in a manner constituting disposal.

(i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "-" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use Constituting Disposal 261-2(c)(1)	Energy recovery/ fuel 261-2(c)(2)	Reclamation 261-2(c)(3) except as provided in 261-4-(a)(17) 261-4(a)(23) 261-4(a)(24) or 261-4(a)(27)	Speculative accumulation 261-2(c)(4)
1	2	3	4	
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in 261-31 or 261-32	(*)	(*)	-	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 261-33	(*)	(*)		
Scrap metal that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.
Note 2: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in Section R315-261-1.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020; F021, unless used as an ingredient to make a product at the site of generation; F022; F023; F026; and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:

(i) The material shall contain a bromine concentration of at least 45%; and

(ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.

(3) The Board shall use the following criteria to add wastes to Subsection R315-261-2(d)(1) or (2):

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials shall be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Subsection R315-261-4(a)(17) apply rather than Subsection R315-261-2(e)(1)(iii).

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in Subsections R315-261-2(d)(1) and (d)(2).

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

R315-261-3. Definition of Hazardous Waste.

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to Section R315-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act,including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents-Provided, That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents-Provided That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals

accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050; crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169; clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170; spent hydrotreating catalyst, EPA Hazardous Waste No. K171; and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv)(D), de minimis losses are inadvertent releases to a wastewater treatment system, including those 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; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in Section R315-261.32: wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32:organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156. Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous

waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, 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.

(b) A solid waste which is not excluded from regulation under Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces, as defined in Section R315-260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent	Maximum for any single composite sample - TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 high temperature metals recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under Rules R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the landfill receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under Rules R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in Section R315-261-32: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in Section R315-261-32: - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172.

(d) Any solid waste described in Subsection R315-261-3(c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under Sections R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g)(1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, as applicable, even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed.

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 it is 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, 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.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to

be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-

4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all four factors in Subsection R315-260-43(a). Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(E) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(G) The reclaimer and intermediate facility have been granted an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Reserved

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards

found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no

beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other

listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of

other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R3315-261-4(e) exemption.

(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(c)(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-(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).

(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; 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.

R315-261-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in Subsection R315-261-7(b), is not subject to regulation under Rules R315-261 through 266, 268, 270 or 124 or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in Subsection R315-261-7(b), is subject to regulation under Rules R315-261 through 266, 268, 270 and 124 and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters, one inch, of residue remain on the bottom of the container or inner liner, or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-261-8. PCB Wastes Regulated Under Toxic Substance Control Act.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the Toxicity Characteristic. Hazardous Waste Codes D018 through D043 only, are exempt from regulation under Rules R315-261 through 265, 268, 270 and 124, and the notification requirements of section 3010 of RCRA.

R315-261-9. Requirements for Universal Waste.

The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through 270 except as specified in Rule R315-273 and, therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 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.

(e) Antifreeze as described in Subsection R315-273-6(a).

(f) Aerosol cans as described in Subsection R315-273-6(b).

R315-261-10. Criteria for Identifying the Characteristics of Hazardous Waste.

(a) The Board shall identify and define a characteristic of hazardous waste in Sections R315-261-20 through 24 only upon determining that:

(1) A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

R315-261-11. Criteria for Listing Hazardous Waste.

(a) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of

less than 2 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.

(3) It contains any of the toxic constituents listed in Rule R315-261 appendix VIII and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in Subsection R315-261-11(a)(3)(vii).

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate. Substances shall be listed on appendix VIII of Rule R315-261 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria shall be designated Toxic wastes.

(b) The Board may list classes or types of solid waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102.

(c) The Board shall use the criteria for listing specified in Section R315-261-11 to establish the exclusion limits referred to in Subsection R315-261-5(c).

R315-261-20. Characteristics of Hazardous Waste - General.

(a) A solid waste, as defined in Section R315-261-2, which is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b), is a hazardous waste if it exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(b) A hazardous waste which is identified by a characteristic in Sections R315-261-20 through 24 is assigned every EPA Hazardous Waste Number that is applicable as set forth in Sections R315-261-20 through 24. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under Rules R315-262 through 265, 268 and 270.

(c) For purposes of Sections R315-261-20 through 24, the Board shall consider a sample obtained using any of the applicable sampling methods specified in appendix I of Rule R315-261 to be a representative sample within the meaning of Rule R315-260.

R315-261-21. Characteristics of Hazardous Waste - Characteristic of Ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 degrees C (140 degrees F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80, see Section R315-260-11, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78, see Section R315-260-11.

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 degrees Fahrenheit or, regardless of the pressure at 70 degrees Fahrenheit, having an absolute pressure exceeding 104 p.s.i. at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 degrees Fahrenheit as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less, by volume, with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation, see Note 2.

(B) Using the Bureau of Explosives' Flame Projection Apparatus, see Note 1, the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus, see Note 1, there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus, see Note 1, there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals shall be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in Subsection R315-261-23(a)(8), in which case it shall be classed as an explosive,

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21,

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S.

Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in Section 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

R315-261-22. Characteristics of Hazardous Waste - Characteristic of Corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 degrees C (130 degrees F) as determined by Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

R315-261-23. Characteristics of Hazardous Waste - Characteristic of Reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

R315-261-24. Characteristics of Hazardous Waste - Toxicity Characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that Table 1. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of Section R315-261-24.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1
Maximum Concentration of Contaminants for the Toxicity Characteristic

PA HW(1)	Contaminant CAS(2)	Regulatory Level (mg/L)
D004 Arsenic	7440-38-2	5.0
D005 Barium	7440-39-3	100.0
D018 Benzene	71-43-2	0.5
D006 Cadmium	7440-43-9	1.0
D019 Carbon tetrachloride	56-23-5	0.5
D020 Chlordane	57-74-9	0.03
D021 Chlorobenzene	108-90-7	100.0
D022 Chloroform	67-66-3	6.0
D007 Chromium	7440-47-3	5.0
D023 o-Cresol	95-48-7	200.0(4)
D024 m-Cresol	108-39-4	200.0(4)
D025 p-Cresol	106-44-5	200.0(4)
D026 Cresol		200.0(4)
D016 2,4-D	94-75-7	10.0
D027 1,4-Dichlorobenzene	106-46-7	7.5
D028 1,2-Dichloroethane	107-06-2	0.5
D029 1,1-Dichloroethylene	75-35-4	0.7
D030 2,4-Dinitrotoluene	121-14-2	0.13(3)
D012 Endrin	72-20-8	0.02
D031 Heptachlor (and its epoxide)	76-44-8	0.008
D032 Hexachlorobenzene	118-74-1	0.13(3)
D033 Hexachlorobutadiene	87-68-3	0.5
D034 Hexachloroethane	67-72-1	3.0
D008 Lead	7439-92-1	5.0
D013 Lindane	58-89-9	0.4
D009 Mercury	7439-97-6	0.2
D014 Methoxychlor	72-43-5	10.0
D035 Methyl ethyl ketone	78-93-3	200.0
D036 Nitrobenzene	98-95-3	2.0
D037 Pentrachlorophenol	87-86-5	100.0
D038 Pyridine	110-86-1	5.0(3)
D010 Selenium	7782-49-2	1.0
D011 Silver	7440-22-4	5.0
D039 Tetrachloroethylene	127-18-4	0.7
D015 Toxaphene	8001-35-2	0.5

D040		
Trichloroethylene	79-01-6	0.5
D04		
2,4,5-Trichlorophenol	95-95-4	400.0
D042		
2,4,6-Trichlorophenol	88-06-2	2.0
D017		
2,4,5-TP (Silvex)	93-72-1	1.0
D043 Vinyl chloride	75-01-4	0.2

(1) Hazardous waste number.
(2) Chemical abstracts service number.
(3) Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
(4) If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

R315-261-30. Lists of Hazardous Wastes - General.

(a) A solid waste is a hazardous waste if it is listed in Sections R315-261-30 through 35, unless it has been excluded from this list under Sections R315-260.20 and 22.

(b) The Board shall indicate the basis for listing the classes or types of wastes listed in Sections R315-261-30 through 35 by employing one or more of the following Hazard Codes:

(1) Ignitable Waste: (I)
(2) Corrosive Waste: (C)
(3) Reactive Waste: (R)
(4) Toxicity Characteristic Waste: (E)
(5) Acute Hazardous Waste: (H)
(6) Toxic Waste: (T)

Appendix VII identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste or Toxic Waste in Sections R315-261-31 and 32.

(c) Each hazardous waste listed in Sections R315-261-30 through 35 is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the notification requirements of Section 3010 of the RCRA and certain recordkeeping and reporting requirements under Rules R315-262 through 265, 268, and 270.

(d) The following hazardous wastes listed in Section R315-261-31 are subject to the exclusion limits for acutely hazardous wastes established in Section R315-261-5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

R315-261-31. Lists of Hazardous Wastes - Hazardous Wastes from Non-Specific Sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in R315-260 appendix IX which incorporates 40 CFR 260 appendix IX by reference.

TABLE 2
Hazardous Wastes From Non-specific Sources

Industry and EPA hazardous waste No. Generic:	Hazardous waste	Hazard Code
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more, by volume, of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I)*
F004	The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F005	The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more, by volume, of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating, segregated basis, on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum	(T)
F007	Spent cyanide plating bath solutions from electroplating operations	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations	(R,T)
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to	(T)

	this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Sections R315-258-40, R315-264-301 or 40 CFR 265.301, which is adopted by reference. For the purposes of this listing, motor vehicle manufacturing is defined in Subsection R315-261-31(b)(4)(i) and Subsection R315-261-31(b)(4)(ii) Describes the Recordkeeping requirements for motor vehicle manufacturing facilities	
F020	Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tetra-, penta-, or hexachlorobenzenes under alkaline conditions	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use;as a reactant, chemical intermediate, or component in a formulating process; of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections R315-261.31 or 32.	(T)
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution	(T)
F026	Wastes, except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use, as a reactant, chemical intermediate, or component in a formulating process, of tetra-, penta-, or hexachlorobenzene under alkaline conditions	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing Hexachlorophene sythesized from prepurified 2,4,5-trichlorophenol as the sole component.	(H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027	(T)
F032	Wastewaters, except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section R315-261-35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, i.e., F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/ solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units, and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under Subsection R315-261-4 (a)(12)(i), if those residuals are to be disposed of	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and	(T)

	oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing	
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Sections R316-261-30 through 35. Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.	(T)
F999	Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.	R,T,C,H)

*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and

(A) the units employ a minimum of 6 hp per million gallons of treatment volume; and either

(B) the hydraulic retention time of the unit is no longer than 5 days; or

(C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles, including light duty vans, pick-up trucks, minivans, and sport utility vehicles. Facilities shall be engaged in manufacturing complete vehicles, body and chassis or unibody, or chassis only.

(ii) Generators shall maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records shall include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators shall maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Director.

R315-261-32. Lists of Hazardous Wastes - Hazardous Wastes from Specific Sources.

(a) The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in appendix IX.

TABLE

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Wood preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments, anhydrous and hydrated,	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R,T)

K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)
K015	Still bottoms from the distillation of benzyl chloride	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)
K026	Stripping still tails from the production of methy ethyl pyridines	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
K083	Distillation bottoms from aniline production	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane	(T)
K103	Process residues from aniline extraction from the production of aniline	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes	(T)
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	(C,T)
K108	Condensed column overheads from product separation and condensed reactor vent gases	(I,T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from arboxylic acid hydrazides	(T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethane	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane	(T)
K149	Distillation bottoms from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, This waste does not include still bottoms from the distillation of benzyl chloride.	(T)
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups	(T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups	(T)
K156	Organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.	(T)
K157	Wastewaters, including scrubber waters, condenser waters, washwaters, and separation waters, from the production of carbamates and carbamoyl oximes. This listing does not	(T)

apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.

K158 Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate. (T)

K159 Organics from the treatment of thiocarbamate wastes (T)

K161 Purification solids; including filtration, evaporation, and centrifugation solids; bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. This listing does not include K125 or K126. (R,T)

K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer, including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater, unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C shall, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they shall provide appropriate documentation, e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc., that the terms of the exclusion were met (T)

K175 Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (T)

K181 Nonwastewaters from the production of dyes and/or pigments, including nonwastewaters commingled at the point of generation with nonwastewaters from other processes, that, at the point of generation, contain mass loadings of any of the constituents identified in Subsection R315-261-32(c) that are equal to or greater than the corresponding Subsection R315-261-32(c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are:
(i) disposed in a Class I or V lined landfill,
(ii) disposed in a hazardous waste landfill unit subject to either Section R315-264-301 or 40 CFR 265.301, which is adopted by reference,
(iii) disposed in other landfill units that are Class I or V lined landfills regulated under Rules R315-301 through 320 or meet the design criteria in Sections R315-264-301, or 40 CFR 265.301, which is adopted by reference, or
(iv) treated in a combustion unit that is permitted under Rules R315-260 through 270, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in Subsection R315-261-32(b)(1). Section R315-261-32(d) describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under Sections R315-261-21 through 24 and R315-261-31 through 33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met (T)

Inorganic chemicals:

K071 Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used (T)

K073 Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production (T)

K106 Wastewater treatment sludge from the mercury cell process in chlorine production (T)

K176 Baghouse filters from the production of antimony oxide, including filters from the production of intermediates, e.g., antimony metal or crude antimony oxide (E)

K177 Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates, e.g., antimony metal or crude antimony oxide (T)

K178 Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process (T)

Pesticides:

K031 By-product salts generated in the production of MSMA and cacodylic acid (T)

K032 Wastewater treatment sludge from the production of chlordane (T)

K033 Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane (T)

K034 Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane (T)

K035 Wastewater treatment sludges generated in the production of creosote (T)

K036 Still bottoms from toluene reclamation distillation in the production of disulfoton (T)

K037 Wastewater treatment sludges from the production of disulfoton (T)

K038 Wastewater from the washing and stripping of phorate production (T)

K039 Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate (T)

K040 Wastewater treatment sludge from the production of phorate (T)

K041 Wastewater treatment sludge from the production of toxaphene (T)

K042 Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T (T)

K043 2,6-Dichlorophenol waste from the production of 2,4-D (T)

K097 Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane (T)

K098 Untreated process wastewater from the production of toxaphene (T)

K099	Untreated wastewater from the production of 2,4-D	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide	(C,T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
K045	Spent carbon from the treatment of wastewater containing explosives	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations	(R)
Petroleum refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
K049	Slop oil emulsion solids from the petroleum refining industry	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
K051	API separator sludge from the petroleum refining industry	(T)
K052	Tank bottoms, leaded, from the petroleum refining industry	(T)
K169	Crude oil storage tank sediment from petroleum refining operations	(T)
K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations	(T)
K171	Spent Hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
K172	Spent Hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
Iron and steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry, SIC Codes 331 and 332	(C,T)
Primary aluminum:		
K088	Spent potliners from primary aluminum reduction	(T)
Secondary lead:		
K069	Emission control dust/sludge from secondary lead smelting. Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)
Veterinary pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
Ink formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead	(T)
Coking:		
K060	Ammonia still lime sludge from coking operations	(T)
K087	Decanter tank tar sludge from coking operations	(T)
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludges from coking operations	(T)
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	(T)
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal	(T)
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal	(T)
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	(T)
K147	Tar storage tank residues from coal tar	(T)

	refining	
K148	Residues from coal tar distillation, including but not limited to, still bottoms	(T)

(b) Listing Specific Definitions:

(1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

TABLE

Constituent	Chemical abstracts No.	Mass levels (kg/yr)
Aniline	62-53-3	9,300
o-Anisidine	90-04-0	110
4-Chloroaniline	106-47-8	4,800
p-Cresidine	120-71-8	660
2,4-Dimethylaniline	95-68-1	100
1,2-Phenylenediamine	95-54-5	710
1,3-Phenylenediamine	108-45-2	1,200

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in Subsections R315-261-32(d)(1) through(d)(3) and (d)(5) establish when nonwastewaters from the production of dyes/pigments would not be hazardous, these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in Subsection R315-261-32(a). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in Subsection R315-261-32(a), then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator shall maintain documentation as described in Subsection R315-261-32(d)(4).

(1) Determination based on no K181 constituents. Generators that have knowledge; e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed; that their wastes contain none of the K181 constituents, see Subsection R315-261-32(c), can use their knowledge to determine that their waste is not K181. The generator shall document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes; e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed; to conclude that annual mass loadings for the K181 constituents are below the listing levels of Subsection R315-261-32(c). To make this determination, the generator shall:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator shall comply with the requirements of Subsection R315-261-32(d)(3) for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(3) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator shall perform all of the steps described in Subsections R315-261-32(d)(3)(i) through (d)(3)(xi) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents, see Subsection R315-261-32(c), are reasonably expected to be present in the wastes based on knowledge of the wastes; e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed.

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator shall comply with the procedures for using knowledge described in Subsection R315-261-32(d)(2) and keep the records described in Subsection R315-261-32(d)(2)(iv). For determinations based on sampling and analysis, the generator shall comply with the sampling and analysis and recordkeeping requirements described in Subsections R315-261-32(d)(3)(iii) through (xi).

(iii) Develop a waste sampling and analysis plan, or modify an existing plan, to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan shall include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(D) A detailed description of the test methods to be used, including sample preparation, clean up, if necessary, and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis shall be unbiased, precise, and representative of the wastes.

(B) The analytical measurements shall be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of Subsection R315-261-32(c).

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings, product of concentrations and waste quantity.

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181

constituents listed in Subsection R315-261-32(c) generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results, including QA/QC data.

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations shall be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator shall keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change shall be retained.

(4) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator shall maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the hazardous waste requirements during the interim period, the generator could be subject to an enforcement action for improper management.

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). For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE

Hazardous waste No.	Chemical abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P203	1646-88-4	Aldicarb sulfone.
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)

P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H3 AsO4
P012	1327-53-3	Arsenic oxide As2 O3
P011	1303-28-2	Arsenic oxide As2 O5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,methylcarbamate.
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-ylmethylcarbamate ester (1:1).
P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-methylamino)carbonyl) oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN)2
P189	55285-14-8	Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester.
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H- pyrazol-3-yl ester.
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester.
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester.
P127	1563-66-2	Carbofuran.
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P189	55285-14-8	Carbosulfan.
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P202	64-00-6	m-Cumenyl methylcarbamate.
P030		Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha,8alpha,8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-1,4,4a,5,8,8ahexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha,7beta, 7aalpha)-
P051	(1)72-20-8	2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, and metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P191	644-64-4	Dimetilan.
P047	(1)534-52-1	4,6-Dinitro-o-cresol, and salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramide, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- ((methylamino)-carbonyl)oxime.
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, and metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P194	23135-22-0	Ethanimidothioic acid, 2-(dimethylamino)-N-(((methylamino) carbonyl)oxy)-2-oxo-, methyl ester.
P066	16752-77-5	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P198	23422-53-9	Formetanate hydrochloride.
P197	17702-57-7	Formparanate.
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P192	119-38-0	Isolan.
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate.
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate.
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis(chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-(3-(((methylamino)-carbonyl)oxy)phenyl)-, monohydrochloride.
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-(((methylamino)carbonyl)oxy)phenyl)-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10- hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro- 3a,4,7,7a-tetrahydro-
P199	2032-65-7	Methiocarb.
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methyllactonitrile
P071	298-00-0	Methyl parathion
P190	1129-41-5	Metolcarb.
P128	315-8-4	Mexacarbate.
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2
P075	(1)54-11-5	Nicotine, and salts

P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO2
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P194	23135-22-0	Oxamyl.
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P048	51-28-5	Phenol, 2,4-dinitro-
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate.
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate.
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-(2- (ethylthio)ethyl) ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl) ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-(2- (methylamino)-2-oxoethyl) ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-(4-((dimethylamino)sulfonyl)phenyl) O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P204	57-47-6	Physostigmine.
P188	57-64-7	Physostigmine salicylate.
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P201	2631-37-0	Promecarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O- ((methylamino)carbonyl) oxime.
P101	107-12-0	Propanenitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	4-Pyridinamine
P075	(1)54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, and salts
P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	(1)57-24-9	Strychnidin-10-one, and salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	(1)57-24-9	Strychnine, and salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide ((H2 N)C(S))2 NH
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P185	26419-73-8	Tirpate.
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2 O5
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P205	137-30-4	Ziram.
P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%
P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P002	591-08-2	Acetamide, -(aminothioxomethyl)-
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P003	107-02-8	2-Propenal
P004	309-00-2	Aldrin
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha,8abeta)-
P005	107-18-6	Allyl alcohol
P005	107-18-6	2-Propen-1-ol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P008	504-24-5	4-Aminopyridine
P008	504-24-5	4-Pyridinamine
P009	131-74-8	Ammonium picrate (R)
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P010	7778-39-4	Arsenic acid H3 AsO4
P011	1303-28-2	Arsenic oxide As2 O5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic oxide As2 O3
P012	1327-53-3	Arsenic trioxide
P013	542-62-1	Barium cyanide
P014	108-98-5	Benzenethiol
P014	108-98-5	Thiophenol
P015	7440-41-7	Beryllium powder
P016	542-88-1	Dichloromethyl ether
P016	542-88-1	Methane, oxybis(chloro-
P017	598-31-2	Bromoacetone
P017	598-31-2	2-Propanone, 1-bromo-
P018	357-57-3	Brucine
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88-85-7	Dinoseb
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN)2
P022	75-15-0	Carbon disulfide

P023	107-20-0	Acetaldehyde, chloro-
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	Benzenamine, 4-chloro-
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P027	542-76-7	3-Chloropropionitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P028	100-44-7	Benzene, (chloromethyl)-
P028	100-44-7	Benzyl chloride
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030		Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P031	460-19-5	Ethanedinitrile
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P036	696-28-6	Arsonous dichloride, phenyl-
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P037	60-57-1	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta,6aalpha,7beta, 7aalpha)-
P038	692-42-2	Arsine, diethyl-
P038	692-42-2	Diethylarsine
P039	298-04-4	Disulfoton
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-(2- (ethylthio)ethyl) ester
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-
P042	51-43-4	Epinephrine
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60-51-5	Dimethoate
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-(2-(methyl amino)-2-oxoethyl) ester
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-((methylamino)carbonyl) oxime
P045	39196-18-4	Thiofanox
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	(1)534-52-1	4,6-Dinitro-o-cresol, and salts
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts
P048	51-28-5	2,4-Dinitrophenol
P048	51-28-5	Phenol, 2,4-dinitro-
P049	541-53-7	Dithiobiuret
P049	541-53-7	Thioimidodicarbonic diamide ((H2 N)C(S))2 NH
P050	115-29-7	Endosulfan
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P051	(1)72-20-8	2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta,2abeta, 3alpha, 6alpha, 6abeta,7beta, 7aalpha)-, and metabolites
P051	72-20-8	Endrin
P051	72-20-8	Endrin, and metabolites
P054	151-56-4	Aziridine
P054	151-56-4	Ethyleneimine
P056	7782-41-4	Fluorine
P057	640-19-7	Acetamide, 2-fluoro-
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P058	62-74-8	Fluoroacetic acid, sodium salt
P059	76-44-8	Heptachlor
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4abeta,5beta, 8beta,8abeta)-
P060	465-73-6	Isodrin
P062	757-58-4	Hexaethyl tetraphosphate
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P064	624-83-9	Methane, isocyanato-
P064	624-83-9	Methyl isocyanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P065	628-86-4	Mercury fulminate (R,T)
P066	16752-77-5	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester
P066	16752-77-5	Methomyl
P067	75-55-8	Aziridine, 2-methyl-
P067	75-55-8	1,2-Propylenimine
P068	60-34-4	Hydrazine, methyl-
P068	60-34-4	Methyl hydrazine
P069	75-86-5	2-Methyllactonitrile
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116-06-3	Aldicarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P071	298-00-0	Methyl parathion
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P072	86-88-4	alpha-Naphthylthiourea
P072	86-88-4	Thiourea, 1-naphthalenyl-
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2
P075	(1)54-11-5	Nicotine, and salts
P075	(1)54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, S)-, and salts
P076	10102-43-9	Nitric oxide
P076	10102-43-9	Nitrogen oxide NO
P077	100-01-6	Benzenamine, 4-nitro-
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P078	10102-44-0	Nitrogen oxide NO2
P081	55-63-0	Nitroglycerine (R)
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P082	62-75-9	Methanamine, -methyl-N-nitroso-
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P084	4549-40-0	Vinylamine, -methyl-N-nitroso-
P085	152-16-9	Diphosphoramide, octamethyl-
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	Endothall
P088	145-73-3	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P089	56-38-2	Parathion
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P092	62-38-4	Mercury, (acetato-O)phenyl-
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P093	103-85-5	Thiourea, phenyl-
P094	298-02-2	Phorate
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl) ester
P095	75-44-5	Carbonic dichloride
P095	75-44-5	Phosgene
P096	7803-51-2	Hydrogen phosphide
P096	7803-51-2	Phosphine
P097	52-85-7	Famphur
P097	52-85-7	Phosphorothioic acid, O-(4-((dimethylamino)sulfonyl)phenyl) O,O-dimethyl ester
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P099	506-61-6	Potassium silver cyanide
P101	107-12-0	Ethyl cyanide
P101	107-12-0	Propanenitrile
P102	107-19-7	Propargyl alcohol
P102	107-19-7	2-Propyn-1-ol
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	(1)157-24-9	Strychnidin-10-one, and salts
P108	(1)157-24-9	Strychnine, and salts

P109	3689-24-5	Tetraethyldithiopyrophosphate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P110	78-00-2	Plumbane, tetraethyl-
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Methane, tetranitro-(R)
P112	509-14-8	Tetranitromethane (R)
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P114	12039-52-0	Tetraethyldithiopyrophosphate
P115	7446-18-6	Thiodiphosphoric acid, tetraethyl ester
P115	7446-18-6	Plumbane, tetraethyl-
P116	79-19-6	Tetraethyl lead
P116	79-19-6	Thiosemicarbazide
P118	75-70-7	Methanethiol, trichloro-
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Ammonium vanadate
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2O5
P120	1314-62-1	Vanadium pentoxide
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P123	8001-35-2	Toxaphene
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P127	1563-66-2	Carbofuran
P128	315-8-4	Mexacarbate
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-((methylamino)-carbonyl)oxime.
P185	26419-73-8	Tirpate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-yl methylcarbamate ester (1:1)
P188	57-64-7	Physostigmine salicylate
P189	55285-14-8	Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285-14-8	Carbosulfan
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N- (((methylamino) carbonyl)oxy)-2-oxo-, methyl ester
P194	23135-22-0	Oxamyl
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-(((methylamino)carbonyl)oxy)phenyl)-
P198	23422-53-9	Formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-(3-(((methylamino)-carbonyl)oxy)phenyl)-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O- ((methylamino)carbonyl) oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P205	137-30-4	Ziram
P999		Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

Note (1) CAS Number given for parent compound only.

(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). For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE

Hazardous waste No.	Chemical abstracts No.	Substance
U394	30558-43-1	A2213.
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240 (1)	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U112	141-78-6	Acetic acid ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
see F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-(((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS-(1aalpha, 8beta, 8aalpha,8balpha))-
U280	101-27-9	Barban.
U278	22781-23-3	Bendiocarb.
U364	22961-82-6	Bendiocarb phenol.
U271	17804-35-2	Benomyl.
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz(c)acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz(a)anthracene
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-

U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene) bis(4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (I)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis(4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis(4- methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U064	189-55-9	Benzo(rst)pentaphene
U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo(a)pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine
U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy- 2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)- 2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S- (1alpha(Z),7(2S*,3R*),7aalpha))-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester.
U271	17804-35-2	Carbamic acid, (1-((butylamino)carbonyl)-1H-benzimidazol-2-yl)-, methyl ester.
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester.
U409	23564-05-8	Carbamic acid, (1,2-phenylenebis (iminocarbonothioyl))bis-, dimethyl ester.
U097	79-44-7	Carbamic chloride, dimethyl-
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester.
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester.
U114	(1)111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
U279	63-25-2	Carbaryl.
U372	10605-21-7	Carbendazim.
U367	1563-38-8	Carbofuran phenol.
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbonic difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha and gamma isomers
U026	494-03-1	Chlornaphazin
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U050	218-01-9	Chrysene
U051		Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha, 5alpha, 6beta)-
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	(1)94-75-7	2,4-D, salts and esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz(a,h)anthracene
U064	189-55-9	Dibenzo(a,i)pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether

U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U395	5952-26-1	Diethylene glycol, dicarbamate.
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz(a)anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U404	121-44-8	Ethanamine, N,N-diethyl-
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis((methylimino)carbonyloxy))bis-, dimethyl ester
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	(1)111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro-(I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl)amino)-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H2 S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno(1,2,3-cd)pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I, T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I, T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I, T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C

U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'- dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U279	63-25-2	1-Naphthalenol, methylcarbamate.
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U373	122-42-9	Propham.
U411	114-26-1	Propoxur.
U387	52888-80-9	Prosulfocarb.
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide
U410	59669-26-0	Thiodicarb.
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide ((H2 N)C(S))2 S2, tetramethyl-
U409	23564-05-8	Thiophanate-methyl.
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U389	2303-17-5	Triallate.
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U404	121-44-8	Triethylamine.
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil shallard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl) oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta, 20alpha)-

U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less
U001	75-07-0	Acetaldehyde (I)
U001	75-07-0	Ethanal (I)
U002	67-64-1	Acetone (I)
U002	67-64-1	2-Propanone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U004	98-86-2	Ethanone, 1-phenyl-
U005	53-96-3	Acetamide, -9H-fluoren-2-yl-
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U007	79-06-1	2-Propenamide
U008	79-10-7	Acrylic acid (I)
U008	79-10-7	2-Propenoic acid (I)
U009	107-13-1	Acrylonitrile
U009	107-13-1	2-Propenenitrile
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-(((aminocarbonyl) oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS-(1aalpha, 8beta, 8aalpha,8balpha))-
U010	50-07-7	Mitomycin C
U011	61-82-5	Amitrole
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U012	62-53-3	Aniline (I,T)
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Auramine
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-
U015	115-02-6	Azaserine
U015	115-02-6	L-Serine, diazoacetate (ester)
U016	225-51-4	Benz(c)acridine
U017	98-87-3	Benzal chloride
U017	98-87-3	Benzene, (dichloromethyl)-
U018	56-55-3	Benz(a)anthracene
U019	71-43-2	Benzene (I,T)
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U021	92-87-5	Benzidine
U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine
U022	50-32-8	Benzo(a)pyrene
U023	98-07-7	Benzene, (trichloromethyl)-
U023	98-07-7	Benzotrichloride (C,R,T)
U024	111-91-1	Dichloromethoxy ethane
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
U025	111-44-4	Dichloroethyl ether
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-
U026	494-03-1	Chlornaphazin
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U027	108-60-1	Dichloroisopropyl ether
U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U028	117-81-7	Diethylhexyl phthalate
U029	74-83-9	Methane, bromo-
U029	74-83-9	Methyl bromide
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U030	101-55-3	4-Bromophenyl phenyl ether
U031	71-36-3	1-Butanol (I)
U031	71-36-3	n-Butyl alcohol (I)
U032	13765-19-0	Calcium chromate
U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U033	353-50-4	Carbonic difluoride
U033	353-50-4	Carbon oxyfluoride (R,T)
U034	75-87-6	Acetaldehyde, trichloro-
U034	75-87-6	Chloral
U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha and gamma isomers
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108-90-7	Benzene, chloro-
U037	108-90-7	Chlorobenzene
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U041	106-89-8	Epichlorohydrin
U041	106-89-8	Oxirane, (chloromethyl)-
U042	110-75-8	2-Chloroethyl vinyl ether
U042	110-75-8	Ethene, (2-chloroethoxy)-
U043	75-01-4	Ethene, chloro-
U043	75-01-4	Vinyl chloride
U044	67-66-3	Chloroform
U044	67-66-3	Methane, trichloro-
U045	74-87-3	Methane, chloro- (I,T)
U045	74-87-3	Methyl chloride (I,T)
U046	107-30-2	Chloromethyl methyl ether
U046	107-30-2	Methane, chloromethoxy-
U047	91-58-7	beta-Chloronaphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U048	95-57-8	o-Chlorophenol
U048	95-57-8	Phenol, 2-chloro-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U050	218-01-9	Chrysene
U051		Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U052	1319-77-3	Phenol, methyl-
U053	4170-30-3	2-Butenal
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Benzene, (1-methylethyl)-(I)
U055	98-82-8	Cumene (I)
U056	110-82-7	Benzene, hexahydro-(I)
U056	110-82-7	Cyclohexane (I)
U057	108-94-1	Cyclohexanone (I)
U058	50-18-0	Cyclophosphamide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830-81-3	Daunomycin
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-
U060	72-54-8	DDD
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-
U061	50-29-3	DDT
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-di chloro-2-propenyl) ester
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz(a,h)anthracene
U064	189-55-9	Benzo(rst)pentaphene
U064	189-55-9	Dibenzo(a,i)pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U067	106-93-4	Ethane, 1,2-dibromo-
U067	106-93-4	Ethylene dibromide
U068	74-95-3	Methane, dibromo-
U068	74-95-3	Methylene bromide
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	Benzene, 1,2-dichloro-
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	Benzene, 1,3-dichloro-
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	Benzene, 1,4-dichloro-
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	2-Butene, 1,4-dichloro-(I,T)
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U075	75-71-8	Methane, dichlorodifluoro-
U076	75-34-3	Ethane, 1,1-dichloro-
U076	75-34-3	Ethylidene dichloride
U077	107-06-2	Ethane, 1,2-dichloro-
U077	107-06-2	Ethylene dichloride
U078	75-35-4	1,1-Dichloroethylene
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	1,2-Dichloroethylene
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U080	75-09-2	Methane, dichloro-
U080	75-09-2	Methylene chloride
U081	120-83-2	2,4-Dichlorophenol
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	2,6-Dichlorophenol
U082	87-65-0	Phenol, 2,6-dichloro-
U083	78-87-5	Propane, 1,2-dichloro-
U083	78-87-5	Propylene dichloride
U084	542-75-6	1,3-Dichloropropene

U084	542-75-6	1-Propene, 1,3-dichloro-
U085	1464-53-5	2,2'-Bioxirane
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U086	1615-80-1	N,N'-Diethylhydrazine
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U090	94-58-6	Dihydrosafrole
U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U092	124-40-3	Methanamine, -methyl-(I)
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-
U094	57-97-6	7,12-Dimethylbenz(a)anthracene
U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U097	79-44-7	Carbamic chloride, dimethyl-
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	1,2-Dimethylhydrazine
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U101	105-67-9	2,4-Dimethylphenol
U101	105-67-9	Phenol, 2,4-dimethyl-
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U103	77-78-1	Sulfuric acid, dimethyl ester
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Diethyleneoxide
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U110	142-84-7	Dipropylamine (I)
U110	142-84-7	1-Propanamine, N-propyl-(I)
U111	621-64-7	Di-n-propylnitrosamine
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U112	141-78-6	Acetic acid ethyl ester (I)
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U114	(1)111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters
U114	(1)111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U115	75-21-8	Ethylene oxide (I,T)
U115	75-21-8	Oxirane (I,T)
U116	96-45-7	Ethylenethiourea
U116	96-45-7	2-Imidazolidinethione
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U117	60-29-7	Ethyl ether (I)
U118	97-63-2	Ethyl methacrylate
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U119	62-50-0	Ethyl methanesulfonate
U119	62-50-0	Methanesulfonic acid, ethyl ester
U120	206-44-0	Fluoranthene
U121	75-69-4	Methane, trichlorofluoro-
U121	75-69-4	Trichloromonofluoromethane
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U124	110-00-9	Furfuran (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U125	98-01-1	Furfural (I)
U126	765-34-4	Glycidylaldehyde
U126	765-34-4	Oxiranecarboxyaldehyde
U127	118-74-1	Benzene, hexachloro-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87-68-3	Hexachlorobutadiene
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U129	58-89-9	Lindane
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Ethane, hexachloro-
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
U133	302-01-2	Hydrazine (R,T)
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H2S
U136	75-60-5	Arsinic acid, dimethyl-
U136	75-60-5	Cacodylic acid
U137	193-39-5	Indeno(1,2,3-cd)pyrene
U138	74-88-4	Methane, iodo-
U138	74-88-4	Methyl iodide
U140	78-83-1	Isobutyl alcohol (I,T)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S- (1alpha(Z),7(2S*,3R*),7aalpha))-
U143	303-34-4	Lasiocarpine
U144	301-04-2	Acetic acid, lead(2+) salt
U144	301-04-2	Lead acetate
U145	7446-27-7	Lead phosphate
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335-32-6	Lead subacetate
U147	108-31-6	2,5-Furandione
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U149	109-77-3	Malononitrile
U149	109-77-3	Propanedinitrile
U150	148-82-3	Melphalan
U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U153	74-93-1	Methanethiol (I,T)
U153	74-93-1	Thiomethanol (I,T)
U154	67-56-1	Methanol (I)
U154	67-56-1	Methyl alcohol (I)
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U155	91-80-5	Methapyrilene
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-chloro-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U159	78-93-3	2-Butanone (I,T)
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U161	108-10-1	Methyl isobutyl ketone (I)
U161	108-10-1	4-Methyl-2-pentanone (I)
U161	108-10-1	Pentanol, 4-methyl-
U162	80-62-6	Methyl methacrylate (I,T)
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-

U163	70-25-7	MNNG
U164	56-04-2	Methylthiouracil
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91-20-3	Naphthalene
U166	130-15-4	1,4-Naphthalenedione
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	1-Naphthalenamine
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	2-Naphthalenamine
U168	91-59-8	beta-Naphthylamine
U169	98-95-3	Benzene, nitro-
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U170	100-02-7	Phenol, 4-nitro-
U171	79-46-9	2-Nitropropane (I,T)
U171	79-46-9	Propane, 2-nitro- (I,T)
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea
U177	684-93-5	Urea, N-methyl-N-nitroso-
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U179	100-75-4	Piperidine, 1-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine
U180	930-55-2	Pyrrolidine, 1-nitroso-
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U181	99-55-8	5-Nitro-o-toluidine
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123-63-7	Paraldehyde
U183	608-93-5	Benzene, pentachloro-
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Ethane, pentachloro-
U184	76-01-7	Pentachloroethane
U185	82-68-8	Benzene, pentachloronitro-
U185	82-68-8	Pentachloronitrobenzene (PCNB)
U186	504-60-9	1-Methylbutadiene (I)
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U189	1314-80-3	Phosphorus sulfide (R)
U189	1314-80-3	Sulfur phosphide (R)
U190	85-44-9	1,3-Isobenzofurandione
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U191	109-06-8	Pyridine, 2-methyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U192	23950-58-5	Pronamide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U193	1120-71-4	1,3-Propane sultone
U194	107-10-8	1-Propanamine (I,T)
U194	107-10-8	n-Propylamine (I,T)
U196	110-86-1	Pyridine
U197	106-51-4	p-Benzoquinone
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U200	50-55-5	Reserpine
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester,(3beta,16beta,17alpha,18beta,20alpha)-
U201	108-46-3	1,3-Benzenediol
U201	108-46-3	Resorcinol
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl)amino)-
U206	18883-66-4	Streptozotocin
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Ethene, tetrachloro-
U210	127-18-4	Tetrachloroethylene
U211	56-23-5	Carbon tetrachloride
U211	56-23-5	Methane, tetrachloro-
U213	109-99-9	Furan, tetrahydro-(I)
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Acetic acid, thallium(1+) salt
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Nitric acid, thallium(1+) salt
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Ethanethioamide
U218	62-55-5	Thioacetamide
U219	62-56-6	Thiourea
U220	108-88-3	Benzene, methyl-
U220	108-88-3	Toluene
U221	25376-45-8	Benzenediamine, ar-methyl-
U221	25376-45-8	Toluenediamine
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U222	636-21-5	o-Toluidine hydrochloride
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U223	26471-62-5	Toluene diisocyanate (R,T)
U225	75-25-2	Bromoform
U225	75-25-2	Methane, tribromo-
U226	71-55-6	Ethane, 1,1,1-trichloro-
U226	71-55-6	Methyl chloroform
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	Ethane, 1,1,2-trichloro-
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Ethene, trichloro-
U228	79-01-6	Trichloroethylene
U234	99-35-4	Benzene, 1,3,5-trinitro-
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U236	72-57-1	Trypan blue
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U237	66-75-1	Uracil shallard
U238	51-79-6	Carbamic acid, ethyl ester
U238	51-79-6	Ethyl carbamate (urethane)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U239	1330-20-7	Xylene (I)
U240	(1)94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U240	(1)94-75-7	2,4-D, salts and esters
U243	1888-71-7	Hexachloropropene
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U244	137-26-8	Thioperoxydicarbonic diamide ((H2N)C(S))2 S2, tetramethyl-
U244	137-26-8	Thiram
U246	506-68-3	Cyanogen bromide (CN)Br
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4- methoxy-
U247	72-43-5	Methoxychlor
U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations of 0.3% or less
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, (1-((butylamino)carbonyl)-1H-benzimidazol-2-yl)-, methyl ester
U278	22781-23-3	Bendiocarb
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63-25-2	Carbaryl
U279	63-25-2	1-Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4	o-Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0	p-Toluidine

U359	110-80-5	Ethanol, 2-ethoxy-
U359	110-80-5	Ethylene glycol monoethyl ether
U364	22961-82-6	Bendiocarb phenol
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1	A2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, (1,2-phenylenebis (iminocarbonothioyl))bis-, dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis((methylimino)carbonyloxy)) bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	7-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-5	2,4,5-T
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol

R315-261-35. Lists of Hazardous Wastes - Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of Subsections R315-261-35(b) and (c). These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with Section R315-261-35;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with Section R315-261-35; or

(iii) Document cleaning and replacement in accordance with Section R315-261-35, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment shall be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses shall be tested by using an appropriate method.

(B) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL-0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking level of 1 ppt, final extraction volume of 10-50 microliters. For other congeners-multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

(iv) The generator shall manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator shall manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with Section R315-261-35 and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative: I certify under penalty of law that all process equipment required to be cleaned or replaced under Section R315-261-35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and

Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass " or "Leaded glass from televisions or computers." It shall also be labeled: "Do not mix with other glass materials."

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a)(1)(ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c)(8). If they are used in a manner constituting disposal, they shall comply with the applicable requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a)(1)through (4), exporters of used, broken CRTs shall comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are 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 exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) 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, (Mail Code 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, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) 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 R315-261-39(a)(5)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that 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 this 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."

(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall

keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections (ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

R315-261-40. Exclusions and Exemptions - Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of Subsection R315-261-39(a)(5), and if they are not speculatively accumulated as defined in Subsection R315-261-1(c)(8).

R315-261-41. Exclusions and Exemptions - Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse shall send a notification to EPA. This notification may cover export activities extending over a 12 month or lesser period.

(1) The notification shall be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number, if applicable, of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused, including reuse after refurbishment, in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states: "I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. 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."

(2) 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, (Mail Code 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, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 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 CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse shall keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation shall be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse shall provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

R315-261-140. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Applicability.

(a) The requirements of Sections R315-261-140 through 143 and R315-261-147 through 151 and Appendix I to R315-261 apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under Subsection R315-261-4(a)(24), except as provided otherwise in Subsection R315-261-140(b).

(b) States and the Federal government are exempt from the financial assurance requirements of Sections R315-261-140 through 143and R315-261-147 through 151.

R315-261-141. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Definitions of Terms as Used in Sections R315-261-140 Through 151.

The terms defined in 40 CFR 265.141(d), (f), (g), and (h), which are adopted by reference, have the same meaning in Sections R315-140 through 143 and R315-261-147 through 151 as they do in 40 CFR 265.141, which is adopted by reference.

R315-261-142. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Cost Estimate.

(a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(1) The estimate shall equal the cost of conducting the activities described in Subsection R315-261-142(a) at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) The cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent

corporation in 40 CFR 265.141(d), which is adopted by reference. The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference; facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference, that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-261-143. For owners and operators using the financial test or corporate guarantee, the cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-261-143(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in Subsections R315-261-142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in Subsection R315-261-142(a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in Subsection R315-261-142(a). The revised cost estimate shall be adjusted for inflation as specified in Subsection R315-261-142(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with Subsections R315-261-142(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-261-142(b), the latest adjusted cost estimate.

R315-261-143. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Financial Assurance Condition.

As provided in Subsection R315-261-4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility shall have financial assurance as a condition of the exclusion as required under Subsection R315-261-4(a)(24). He shall choose from the options as specified in Subsections R315-261-143(a) through (e).

(a) Trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by establishing a trust fund which conforms to the requirements of Subsection R315-261-143(a) and submitting an originally signed duplicate of the trust agreement to the Director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-261-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-261-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund shall be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of Section R315-261-143.

(4) Whenever the current cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in Section R315-261-143 to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in Section R315-261-143 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsections R315-261-143(a)(5) or (6), the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing. If the owner or operator begins final closure under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Director shall instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 40 CFR 265.143(i), which is adopted by reference, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the trustee to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(8) The Director shall agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(b) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining a surety bond which conforms to the requirements of Subsection R315-261-143(b) and submitting the bond to the Director. 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.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under Subsection R315-261-4(a)(24) or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Director becomes final, or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-261-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) 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.

(6) The penal sum of the bond shall be in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-261-143.

(c) Letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-261-143(c) and submitting the letter to the Director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(c).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number, if any issued; name; and address of the facility; and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Following a determination by the Director that the hazardous secondary materials do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the Director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in Section R315-261-143 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the

current expiration date, the Director shall draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-261-143 and obtain written approval of such assurance from the Director.

(10) The Director shall return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(d) Insurance.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining insurance which conforms to the requirements of Subsection R315-261-143(d) and submitting a certificate of such insurance to the Director. 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 Utah. (2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(d).

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate, except as provided in subsection R315-261-143(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The insurance policy shall guarantee that funds shall be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; as applicable, for the facilities covered by this policy. The policy shall also guarantee that once funds are needed, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) After beginning partial or final closure under Rules R315-264 or 265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Director shall instruct the insurer to make reimbursements in such amounts as the Director specifies in writing if the Director determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Director has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Subsection R315-261-143(h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Director does not instruct the insurer to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-261-143(i)(10). Failure to pay the premium, without substitution of alternate financial assurance as specified in Section R315-261-143, shall constitute a significant violation of these regulations warranting such remedy as the Director deems necessary. Such violation shall be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The Director deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Director.

(10) The Director shall give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(e) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by demonstrating that he passes a financial test as specified in Subsection R315-261-143(e). To pass this test the owner or operator shall meet the criteria of either Subsections R315-261-143(e)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and

abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, Subsection R315-261-151(e). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(e); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-143(e)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-143(e)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in Subsection R315-261-143(e)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, if any are issued; name; address; and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of Sections R315-261-140 through 143 and R315-261-147 through 151;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he shall submit the documents specified in Subsection R315-261-143 (e)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year shall be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-143(e)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-143(e)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-261-143. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-261-143(e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-261-143(e)(3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), the owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-143(e)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in Subsection R315-261-143(e)(3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(10) An owner or operator may meet the requirements of Section R315-261-143 by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsections R315-261-143(e)(1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(1). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-143(e)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) Following a determination by the Director that the hazardous secondary materials at the owner or operator's facility

covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in Rules R315-264 or 265, as applicable, or establish a trust fund as specified in Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

(ii) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-261-143 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-261-143 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in Subsection R315-261-143(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-261-143 to meet the requirements of Section R315-261-143 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, if any issued; name; address; and the amount of funds assured by the mechanism. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under Subsection R315-261-4(a)(24)(vi)(F) shall submit a plan for removing all hazardous secondary material residues to the Director at least 180 days prior to the date on which he expects to cease to operate under the exclusion.

(2) The plan shall include, at least:

(A) For each hazardous secondary materials storage unit subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials shall be recycled or sent for recycling, and how all residues, contaminated containment systems, liners, etc; contaminated soils; subsoils; structures; and equipment shall be removed or decontaminated as necessary to protect human health and the environment, and

(B) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(C) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(D) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under Subsection R315-261-4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The Director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He shall also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. 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. The Director shall approve, modify, or disapprove the plan within 90 days of its receipt. If the Director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director shall approve or modify this plan in writing within 60 days. If the Director modifies the plan, this modified plan becomes the approved plan. The Director shall assure that the approved plan is consistent with Subsection R315-261-143(h). A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(4) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator shall submit to the Director, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification shall be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director, upon request, until he releases the owner or operator from the financial assurance requirements for Subsection R315-261-4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of Section R315-261-143. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan as required in Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Director has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance

with the approved plan.

R315-261-147. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-261-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Subsection R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-261-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section R315-260-10, which are used to manage hazardous secondary materials excluded under Subsection R315-261-4(a)(24) or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements of Section R315-261-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-261-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147.

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Section R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability

coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-261-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under Subsection R315-261-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(b)(1) through (b)(6).

(c) Request for alternative. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsection R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain an alternative financial liability requirement from the Director. The request for an alternative financial liability requirement shall be submitted in writing to the Director. If granted, the alternative financial liability requirement shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests an alternative financial liability requirement to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsection R315-261-147(a) or (b).

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsections R315-261-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-261-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Director has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of Subsections R315-261-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-261-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Subsections R315-261-147(a) and (b) and the annual aggregate amounts for which coverage is required under Subsections R315-264-147(a) and (b) and 40 CFR 265.147(a) and(b), which are adopted by reference,.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by Subsection R315-261-143(e), and liability coverage, he shall submit the letter specified in Subsection R315-261-151(f) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-261-151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-147(f)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-147(f)(3)(ii) or any other audited financial statement or data filed with the SEC,

then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-261-147(f)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-261-147(f)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-261-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-261-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-261-147(g)(2), an owner or operator may meet the requirements of Section R315-261-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsection R315-261-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(2)(i) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-261-147 only if the non-U.S. corporation has identified a registered agent for service of process in Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-261-147(h) and submits a copy of the letter of credit to the Director.

(2) 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 Federal or Utah agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-261-151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-261-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(k).

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by establishing a trust fund that conforms to the requirements of Subsection R315-261-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority

to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-261-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-261-147 to cover the difference. For purposes of Subsection R315-261-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-261-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-261-151(l).

R315-261-148. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subsection R315-261-143(e) shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of Sections R315-261-143 or R315-261-147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

R315-261-151. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in Subsection R315-261-143(a) 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 of the State of Utah, (the "BOARD") has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under Rules R315-264, or 265, or satisfying the conditions of the exclusion under Subsection R315-261-4(a)(24) shall provide assurance that funds shall be available if needed for care of the facility under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference; as applicable,

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", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(d) The term "DIRECTOR" means the Director, 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.

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, if available; name; address; and the current 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 in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24). 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 Director.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of the performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference, for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for expenditures for such activities in such amounts as the beneficiary 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 of this section. 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 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 depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary 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 of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. 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 12. 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 13. 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 Diector, 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 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor 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 amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such 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 15. 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 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, 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 Direcotr, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. 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 or 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 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of (insert name of State).

Section 19. 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 R315-261-151(a)(1) 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 acknowledgment which shall accompany the trust agreement for a trust fund as specified in Subsection R315-261-143(a). State of Utah requirements may differ on the proper content of this acknowledgment.

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)

(b) A surety bond guaranteeing payment into a trust fund, as specified in Subsection R315-261-143(b), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: (legal name and business address of owner or operator)

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:

Surety(ies): (name(s) and business address(es))

EPA and State Identification Numbers, name, address and amount(s) for each facility guaranteed by this bond:

Total penal sum of bond: $

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Director of the Division of Waste management and Radiation Control of the State of Utah (hereinafter called the Director) in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Utah Solid and Hazardous Waste Act as amended, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under Subsection R315-261-4(a)(24), and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under Subsection R315-261-4(a)(24) and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under Subsection R315-261-4(a)(24),

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Sections R315-261-140 through 143 and R315-261-147 through 151, as applicable, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal

sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(b) as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)Corporate Surety(ies)

(Name and address)

State of incorporation:Liability limit:

$(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(c) A letter of credit, as specified in Subsection R315-261-143(c), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

(Director name), Director,

Division of Waste Management and Radiation Control

195 North 1950 West

P.O Box 144880

Salt Lake City, Utah 84114-4880

Dear Director: We hereby establish our Irrevocable Standby Letter of Credit No.____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No.__, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Utah Solid and Hazardous Waste Act as amended."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (owner's or operator's name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(c) as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(d) A certificate of insurance, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: (List for each facility: The EPA and State Identification Numbers (if any issued), name, address, and the amount of insurance for all facilities covered, which shall total the face amount shown below.)

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Subsection R315-261-143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director of the Division of Waste Management and Radiation Control, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Subsection R315-261-151(d) such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:(Date)

(e) A letter from the chief financial officer, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

195 North 1950 West

P.O. Box 144880
Salt Lake City, UT 84114-4880

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State Identification Numbers (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions and states where the Director is not authorized to administer the financial requirements of R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: __.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: __.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates shown in the nine paragraphs above) $__

*2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) $__

*3. Tangible net worth $____

*4. Net worth $____-

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital (line 5 minus line 6) $____

*8. The sum of net income plus depreciation, depletion, and amortization $____-

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____-

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____-

12. Is line 7 at least 6 times line 1? (Yes/No) ____-

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____-

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____-

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____-

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____-

Alternative II

1. Sum of current cost estimates (total of all cost estimates shown in the eight paragraphs above) $____-

2. Current bond rating of most recent issuance of this firm and name of rating service ____-

3. Date of issuance of bond ____-

4. Date of maturity of bond ____-

*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $____-

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____-

7. Is line 5 at least $10 million? (Yes/No) ____

8. Is line 5 at least 6 times line 1? (Yes/No) ____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____

10. Is line 6 at least 6 times line 1? (Yes/No) ____-

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(e) as such regulations were constituted on the date shown immediately below.

(Signature) (Name) (Title) (Date)

(f) A letter from the chief financial officer, as specified in Subsection R315-261-147(f), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

P.O. 144880

Salt Lake City, Utah 84114-4880

I am the chief financial officer of (firm's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under Section R315-261-147(insert "and costs assured Subsection R315-261-143(e)" if applicable) as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151:____

The firm identified above guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: ____-. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee -____; or (3) engaged in the following substantial business relationship with the owner or operator ____-, and receiving the following value in consideration of this guarantee ____-). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference,:____

The firm identified above guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: __. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

(If you are using the financial test to demonstrate coverage of both liability and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which are adopted by reference; fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State identification number (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility:____.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-

closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____).

(Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions, and states where the Director is not authorized to administer the financial requirements of R315-264.264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____-.

*2. Current assets $____-.

*3. Current liabilities $____-.

4. Net working capital (line 2 minus line 3) $____-.

*5. Tangible net worth $____-.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____-.

7. Is line 5 at least $10 million? (Yes/No) ____-.

8. Is line 4 at least 6 times line 1? (Yes/No) ____-.

9. Is line 5 at least 6 times line 1? (Yes/No) ____-.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____-.

2. Current bond rating of most recent issuance and name of rating service ____-____-.

3. Date of issuance of bond _____---.

4. Date of maturity of bond _____---.

*5. Tangible net worth $____-.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____-.

7. Is line 5 at least $10 million? (Yes/No) ____-.

8. Is line 5 at least 6 times line 1? ____-.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) __.

10. Is line 6 at least 6 times line 1? ____-.

(Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which is adopted by reference.)

Part B. Facility Care and Liability Coverage

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) and Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) and Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) $____-

2. Amount of annual aggregate liability coverage to be demonstrated $____-

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____-

*5. Tangible net worth $____

*6. Net worth $____-

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____-

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) $____-

2. Amount of annual aggregate liability coverage to be demonstrated $____-

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service _____-

5. Date of issuance of bond _____---

6. Date of maturity of bond _____---

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____-

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____-

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(f) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(g)(1) A corporate guarantee, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Facility Care

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in Subsections R315-264-141(h) and 40 CFR 265.141(h), which is adopted by reference," to the Director of the Utah Division of Waste Management and Radiation Control (the Director).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-143(e).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and State Identification Number (if any issued), name, and address.

3. "Closure plans" as used below refer to the plans maintained as required by Sections R315-261-140 through 143 and R315-261-147 through 151 for the care of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees that in the event of a determination by the Director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in Sections R315-264-110 through 120 or 40 CFR 265-110 through 121 which are adopted by reference, as applicable, or establish a trust fund as specified in Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to Rules R315-264, 265, or Sections R315-261-140 through 143 and R315-261-147 though 151.

9. Guarantor agrees to remain bound under this guarantee for as long as (owner or operator) shall comply with the applicable financial assurance requirements of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate coverage complying with Section R315-261-143.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator)

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, and obtain written approval of such assurance from the Director within 90 days after a notice of cancellation by the guarantor is received by theDirector from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Director or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151.

I hereby certify that the wording of this guarantee is identical to the wording specified in Subsection R315-261-151(g)(1) as such regulations were constituted on the date first above written.

Effective date: (Name of guarantor) (Authorized signature for guarantor) (Name of person signing) (Title of person signing) Signature of witness or notary:

(2) A guarantee, as specified in Subsection R315-261-147(g), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Guarantee for Liability Coverage

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert "the State of ____-"

and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is one of the following: "our subsidiary;" "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in (either Subsection R315-264-141(h) or 40 CFR 265.141(h), which is adopted by reference)", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-147(g).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and state identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.) This corporate guarantee satisfies RCRA third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert owner or operator) 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 owner or operator) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); 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 owner or operator). This exclusion applies:

(A) Whether (insert owner or operator) 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 owner or operator);

(2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert owner or operator);

(4) Personal property in the care, custody or control of (insert owner or operator);

(5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate liability coverage as specified in Section R315-261-147, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in Section R315-261-147 in the name of (owner or operator), unless (owner or operator) has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Section R315-261-147, provided that such modification shall become effective only if the Director does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable requirements of Section R315-261-147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

9. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate liability coverage complying with Section R315-261-147.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator):

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal 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 Principal) 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 (Principal's) facility should be paid in the amount of $.

(Signatures) Principal (Notary) Date (Signatures) Claimant(s) (Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee shall be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Subsection R315-261-151(g)(2) as such regulations were constituted on the date shown immediately below.

Effective date:

(Name of guarantor) (Authorized signature for guarantor)

(Name of person signing) (Title of person signing) Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required by Section R315-261-147 shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Section R35-261-147. The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible 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 for which coverage is demonstrated as specified in Subsection R315-261-147(f).

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, 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 facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of this endorsement shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

Attached to and forming part of policy No. __ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of insured) of (address) this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in Subsection R315-261-151(h) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(i) A certificate of liability insurance as required in Section R315-261-147 shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Certificate of Liability Insurance

1. (Name of Insurer), (the "Insurer"), of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of insured), (the "insured"), of (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under Rules R315-264 and 265, and the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F). The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible 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 for which coverage is demonstrated as specified in Section R315-261-147.

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, 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 hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of the insurance shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

I hereby certify that the wording of this instrument is identical to the wording specified in Subsection R315-261-151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(j) A letter of credit, as specified in Subsection R315-261-147(h) of this chapter, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

(Name and Address of Issuing Institution)

(Director name), Director,

Division of Waste Management and Radiation Control

195 North 1950 West

P.O Box 144880

Salt Lake City, Utah 84114-4880

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____----- in the favor of ("any and all third-party liability claimants" or insert name of trustee of the standby trust fund), at the request and for the account of (owner or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars $____----- per occurrence and the annual aggregate amount of (in words) U.S. dollars $_---, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of (in words) U.S. dollars $____----- per occurrence, and the annual aggregate amount of (in words) U.S. dollars $____-----, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____-----, and (insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties (insert principal) 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 operations of (principal's) facility should be paid in the amount of $( ). We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which (insert principal) 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 principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); 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 principal).

This exclusion applies:

(A) Whether (insert principal) 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 principal);

(2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert principal);

(4) Personal property in the care, custody or control of (insert principal);

(5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures)

Grantor

(Signatures)

Claimant(s)

or (2) 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.)

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

(Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary" or "excess" coverage)."

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(j) as such regulations were constituted on the date shown immediately below.

(Signature(s)

and title(s) of official(s) of issuing institution)

(Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(k) A surety bond, as specified in Subsection R315-261-147(i), shall be worded as follows: except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Payment Bond

Surety Bond No. (Insert number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (Insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies)), Surety Company(ies), of (Insert surety(ies) place of business).

(EPA and State Identification Number (if any issued), name, and address for each facility guaranteed by this bond:) __

TABLE

	Nonsudden accidental occurrences	Sudden accidental occurrences
Penal Sum Per Occurrence	(insert amount)	(insert amount)
Annual Aggregate	(insert amount)	(insert amount)

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules adopted by the Utah Waste Management and Radiation Control Board, particularly Rules R315-264; 265, that is adopted by reference; and Sections R315-261-140 through 143 and R315-261-147 through 151 (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert Principal) 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 Principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Principal) under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of (insert Principal) arising from, and in the course of, employment by (insert principal); 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 Principal). This exclusion applies:

(A) Whether (insert Principal) 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 Principal);

(2) Premises that are sold, given away or abandoned by (insert Principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Principal);

(4) Personal property in the care, custody or control of (insert Principal);

(5) That particular part of real property on which (insert Principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert Principal) are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal 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 name of Principal) 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 (Principal's) facility should be paid in the amount of $( ).

(Signature)

Principal

(Notary) Date

(Signature(s))

Claimant(s)

(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond shall be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Director.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate Seal)
CORPORATE SURETY(IES)
(Name and address)
State of incorporation: Liability Limit: $(Signature(s))
(Name(s) and title(s))
(Corporate seal)
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $

(l)(1) A trust agreement, as specified in Subsection R315-261-147(j), 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 Waste Management and Radiation Control Board of the State of Utah, "the Board", has established certain regulations applicable to the Grantor, requiring that an owner or operator 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 trust 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", "Utah 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.

(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 and State Identification Number (if any issued), 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 trust fund, hereinafter 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 to (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 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 Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim 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) facility or group of facilities should be paid in the amount of $( ).

(Signatures)
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 cash or securities acceptable to the Trustee.

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 of this section. 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 circumstance 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 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. 81a-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 of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. 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 12. 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 13. 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 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor 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. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, or their designees, and the Trustee shall act and shall be fully protected in acting in

accordance with such 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 Direcotr, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director.

Section 16. 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 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, 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 delivered to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. 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 or 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 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

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 R315-261-151(l) 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 R315-261-147(j). State requirements may differ on the proper

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)

(m)(1) A standby trust agreement, as specified in Subsection R315-261-147(h), 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 (Board), has established certain regulations applicable to the Grantor, requiring that an owner or operator 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", "Utah 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.

(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 and State Identification Number (if any issued), 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.

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) 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 R315-261-151(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 of this Section. 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 depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary 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 R315-261-151(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 standby trust fund as specified in Subsection R315-261-147(h).

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)

R315-261-170. Use and Management of Containers - Applicability.

Sections R315-261-170 through 179 apply to hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) and stored in containers.

R315-261-171. Use and Management of Containers - Condition of Containers.

If a container holding hazardous secondary material is not in good condition, e.g., severe rusting, apparent structural defects, or if it begins to leak, the hazardous secondary material shall be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of Rule R315-261.

R315-261-172. Use and Management of Containers - Compatibility Of Hazardous Secondary Materials With Containers.

The container shall be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

R315-261-173. Use and Management of Containers - Management of Containers.

(a) A container holding hazardous secondary material shall always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

R315-261-175. Use and Management of Containers - Containment.

(a) Container storage areas shall have a containment system that is designed and operated in accordance with Subsection R315-261-175(b).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system shall have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

(4) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in Subsection R315-261-175(b)(3) to contain any run-on which might enter the system; and

(5) Spilled or leaked material and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

R315-261-176. Use and Management of Containers - Special Requirements for Ignitable or Reactive Hazardous Secondary Material.

Containers holding ignitable or reactive hazardous secondary material shall be located at least 15 meters (50 feet) from the facility's property line.

R315-261-177. Use and Management of Containers - Special Requirements for Incompatible Materials.

(a) Incompatible materials shall not be placed in the same container.

(b) Hazardous secondary material shall not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

R315-261-179. Use and Management of Containers - Air Emission Standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089.

R315-261-190. Tank Systems - Applicability.

(a) The requirements of Sections R315-261-190 through 200 apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(b) Tank systems, including sumps, as defined in Section R315-260-10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in Subsection R315-261-193(a).

R315-261-191. Tank Systems - Assessment of Existing Tank System's Integrity.

(a) Tank systems shall meet the secondary containment requirements of Section R315-261-193, or the remanufacturer or other person that handles the hazardous secondary material shall determine that the tank system is not leaking or is unfit for use. Except as provided in Subsection R315-261-191(c), a written assessment reviewed and certified by a qualified Professional Engineer shall be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material 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 material(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 material(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 that addresses cracks, leaks, corrosion, and erosion.

Note to Subsection R315-261-191(b)(5)(ii): 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) If, as a result of the assessment conducted in accordance with Subsection R315-261-191(a), a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196.

R315-261-193. Tank Systems - Containment and Detection of Releases.

(a) Secondary containment systems shall be:

(1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to Subsection R315-261-193(a): If the collected material is a hazardous waste under Rule R315-261, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through 265, 266, and 268. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(b) To meet the requirements of Subsection R315-261-193(a), secondary containment systems shall be at a minimum:

(1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients, including static head and external hydrological forces, physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation, (including stresses from nearby vehicular traffic;

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks shall include one or more of the following devices:

(1) A liner, external to the tank;

(2) A vault; or

(3) A double-walled tank.

(d) In addition to the requirements of Subsections R315-261-193(a), (b), and (c), secondary containment systems shall satisfy the following requirements:

(1) External liner systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s), i.e., capable of preventing lateral as well as vertical migration of the material.

(2) Vault systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints, if any;

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks shall be:

(i) Designed as an integral structure, i.e., an inner tank completely enveloped within an outer shell, so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

Note to Subsection R315-261-193(d)(3): The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) Reserved

(f) Ancillary equipment shall be provided with secondary containment, e.g., trench, jacketing, double-walled piping, that meets the requirements of Subsections R315-261-193(a) and (b) except for:

(1) Aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices, e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

R315-261-194. Tank Systems - General Operating Requirements.

(a) Hazardous secondary materials or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls, e.g., check valves, dry disconnect couplings;

(2) Overfill prevention controls, e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank; and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196 if a leak or spill occurs in the tank system.

R315-261-196. Tank Systems - Response To Leaks or Spills and Disposition of Leaking or Unfit-For-Use Tank Systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material shall satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of material from tank system or secondary containment system.

(1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material shall, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in Subsection R315-261-196(d)(2), shall be reported to the Director within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of Subsection R315-261-196(d) if it is:

(i) Less than or equal to a quantity of 1 pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Director:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil, soil composition, geology, hydrogeology, climate;

(iii) Results of any monitoring or sampling conducted in connection with the release, if available. If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Director as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of Subsections R315-261-196(e)(2) through (4), the tank system shall cease to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section R315-261-193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of Subsection R315-261-196(f) are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, e.g., the bottom of an inground or onground tank, the entire component shall be provided with secondary containment in accordance with Section R315-261-193 prior to being returned to use.

(f) Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with Subsection R315-261-196(e), and the repair has been extensive, e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, the tank system shall not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification shall be kept on file at the facility and maintained until closure of the facility.

Note 1 to Section R315-261-196: The Director may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to Section R315-261-196: 40 CFR part 302 may require the owner or operator to notify the National Response

Center of certain releases.

R315-261-197. Tank Systems - Termination of Remanufacturing Exclusion.

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under Rules R315-261 through 266, 268, 270, and 124, as applicable.

R315-261-198. Tank Systems - Special Requirements for Ignitable or Reactive Materials.

(a) Ignitable or reactive material shall not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive shall store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required 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.

R315-261-199. Tank Systems - Special Requirements for Incompatible Materials.

(a) Incompatible materials shall not be placed in the same tank system.

(b) Hazardous secondary material shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

R315-261-200. Tank Systems - Air Emission Standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064, and 1080 through 1089.

R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d), that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, 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 at any time shall comply with Sections R315-261-410 and 420.

R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) 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;

(3) 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

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility 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.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate 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 R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate 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 R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) 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.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material 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;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall document the refusal in the operating record.

R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less 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 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) 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 R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) 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;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) 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;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(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.

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.

R315-261-1030. Air Emission Standards for Process Vents - Applicability.

The regulations in Sections R315-261-1030 through 1035 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

R315-261-1031. Air Emission Standards for Process Vents - Definitions.

(a) As used in Sections R315-261-1030 through 1035, all terms not defined herein shall have the meaning given them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(2) "Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(3) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(4) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(5) "Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(6) "Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

(7) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale, e.g., a primary condenser on a solvent recovery unit, is not a control device.

(8) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(9) "Distillate receiver" means a container or tank used to receive and collect liquid material, condensed, from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(10) "Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(11) "Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

(12) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by Sections R315-261-1030 through 1035.

(13) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(14) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(15) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(16) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(17) "Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

(18) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(19) "In gas/vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

(20) "In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

(21) "In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 degrees C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

(22) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(23) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(24) "Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

(25) "Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

(26) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(27) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(28) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank, e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well, associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(29) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(30) "Sampling connection system" means an assembly of

equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

(31) "Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(32) "Separator tank" means a device used for separation of two immiscible liquids.

(33) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent, the two being mutually insoluble, to preferentially dissolve and transfer one or more components into the solvent.

(34) "Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

(35) "Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(36) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(37) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(38) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(39) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical" means such as compressors or vacuum-producing systems or by process-related" means such as evaporation produced by heating and not caused by tank loading and unloading, working losses, or by natural" means such as diurnal temperature changes.

R315-261-1032. Air Emission Standards for Process Vents - Process Vents.

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of Subsection R315-261-1032(a) the closed-vent system and control device shall meet the requirements of Section R315-261-1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Subsection R315-261-1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Subsection R315-261-1034(c) shall be used to resolve the disagreement.

R315-261-1033. Air Emission Standards for Process Vents - Closed-Vent Systems and Control Devices.

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of Rule R315-261 shall comply with the provisions of Sections R315-261-1033.

(2) Reserved

(b) A control device involving vapor recovery, e.g., a condenser or adsorber, shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-261-1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device, e.g., a vapor incinerator, boiler, or process heater, shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 deg. C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in Subsection R315-261-1033(e)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in Subsection R315-261-1033(f)(2)(iii).

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in Subsection R315-261-1033(e)(2).

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), less than 18.3 m/s (60 ft/s), except as provided in Subsections R315-261-1033(d)(4)(ii) and (iii).

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), less than the velocity, V_{max}, as determined by the method specified in Subsection R315-261-1033(e)(4) and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated

with an exit velocity less than the velocity, V_{max}, as determined by the method specified in Subsection R315-261-1033(e)(5).

(6) A flare used to comply with Section R315-261-1033 shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of Sections R315-261-1030 through 1035. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation: The equation found in 40 CFR261.1033(e)(2) 2015 ed is adopted and incorporated by reference.

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degrees C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 deg. C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82, incorporated by reference as specified in Section R315-260-11; and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83, incorporated by reference as specified in Section R315-260-11, if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate, in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed , free, cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with Subsection R315-261-1033(d)(4)(iii) shall be determined by the following equation:

$Log_{10}(V_{max}) = (H_T + 28.8)/31.7$

Where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in Subsection R315-261-1033(e)(2).

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$V_{max} = 8.706 + 0.7084 (H_T)$

Where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in Subsection R315-261-1033(e)(2).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of plus/minus 1 percent of the temperature being monitored in degrees Celsius (deg. C) or plus/minus 0.5 deg. C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit, i.e., product side.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by Subsections R315-261-1033(f)(1) and (2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of Section R315-261-1033.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly

onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter shall ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of Rule R315-261 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in Subsection R315-261-1034(b), and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(1) shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to Section R315-261-1033. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in Subsection R315-261-1033(l)(1)(i), the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed, e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange, shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in Subsection R315-261-1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced, e.g., a section of damaged hard piping is replaced with new hard piping, or the connection is unsealed, e.g., a flange is unbolted.

(B) Closed-vent system components or connections other than those specified in Subsection R315-261-1033(l)(1)(ii)(A) shall be monitored annually and at other times as requested by the Director, except as provided for in Subsection R315-261-1033(o), using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(2) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(2) shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to Section R315-261-1033. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in Subsection R315-261-1033(l)(3)(iii).

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in Section R315-261-1035.

(m) Closed-vent systems and control devices used to comply with provisions of Sections R315-261-1030 through 1035 shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-600 through 603; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Sections R315-261-1030 through 1035 and 1080 through 1089 or subparts AA and CC of 40 CFR 265 which is incorporated in R315-265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through 351; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O, which is incorporated by Rule R315-265.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through 112; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through 112.

(o) Any components of a closed-vent system that are designated, as described in Subsection R315-261-1035(c)(9), as unsafe to monitor are exempt from the requirements of Subsection R315-261-1033(l)(1)(ii)(B) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1033(l)(1)(ii)(B); and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in Subsection R315-261-1033(l)(1)(ii)(B) as frequently as practicable during safe-to-monitor times.

R315-261-1034. Air Emission Standards for Process Vents - Test Methods and Procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1030 through 1035 shall comply with the test methods and procedural requirements provided in Section R315-261-1034.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Subsection R315-261-1033(l), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Subsection R315-261-1032(a) and with the total organic compound concentration limit of Subsection R315-261-1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas shall be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

The equation found in 40 CFR 261.1034(c)(1)(iv)(A), 2015 ed. is adopted and incorporated by reference

Where:

E_h= Total organic mass flow rate, kg/h;

Q_{2sd}= Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i= Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i= Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_h)(H)$

Where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates, E_h, as determined in Subsection R315-261-1034(c)(1)(iv), and by summing the annual total organic mass emission rates, E_A, as determined in Subsection R315-261-1034(c)(1)(v), for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in Subsection R315-261-1034(c)(1).

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of Sections R315-261-1030 through 1035, the remanufacturer or other person that stores or treats the hazardous secondary material shall make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples shall be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples shall be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035 or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at Subsection R315-261-1034(d)(1).

R315-261-1035. Air Emission Standards for Process Vents - Recordkeeping Requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1030 through 1035 shall comply with the recordkeeping requirements of Section R315-261-1035.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1030 through 1035 may comply with the

recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the following records on-site:

(1) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035.

(2) Up-to-date documentation of compliance with the process vent standards in Subsection R315-261-1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, i.e., the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, e.g., identify the hazardous secondary material management units on a facility plot plan.

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or vent stream organic compounds and concentrations, that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan shall be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Subsection R315-261-1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by Subsection R315-261-1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions," incorporated by reference as specified in R315-260-11, or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsections R315-261-1035(b)(4)(iii)(A) through (G) may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Subsection R315-261-1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer

or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Subsection R315-261-1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Subsection R315-261-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Rule R315-261 shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Subsections R315-261-1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by Subsections R315-261-1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 deg. C, period when the combustion temperature is below 760 deg. C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(A).

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B), or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B).

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(C), or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of Subsection R315-261-1035(b)(4)(iii)(C).

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(vii) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 degrees C above the design average exhaust vent stream temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E); or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the condenser outlet established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(5) Explanation for each period recorded under Subsection R315-261-1035(c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in Subsections R315-261-1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in Subsection R315-261-1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to Subsection R315-261-1033(o) shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Subsection R315-261-1033(o), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in Subsection R315-261-1033(l), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the

leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there shall be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by Subsections R315-261-1035(c)(3) through (10) shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Subsection R315-261-1032 including supporting documentation as required by Subsection R315-261-1034(d)(2) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

R315-261-1050. Air Emission Standards for Equipment Leaks - Applicability.

(a) The regulations in Sections R315-261-1050 through 1064 apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

R315-261-1051. Air Emission Standards for Equipment Leaks - Definitions.

As used in Sections R315-261-1050 through 1064, all terms shall have the meaning given them in Section R315-261-1031, the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

R315-261-1052. Air Emission Standards: Pumps in Light Liquid Service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section R315-261-1063(b), except as provided in Subsections R315-261-1052(d), (e), and (f).

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than five calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of Subsection R315-261-1052(a), provided the following requirements are met:

(1) Each dual mechanical seal system shall be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-261-1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in Subsection R315-261-1052(d)(3) shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in Subsection R315-261-1052(d)(5)(ii), a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(iii) A first attempt at repair, e.g., relapping the seal, shall be made no later than five calendar days after each leak is detected.

(e) Any pump that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsections R315-261-1052(a), (c), and (d) if the pump meets the following requirements:

(1) Shall have no externally actuated shaft penetrating the pump housing.

(2) Shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section R315-261-1063(c).

(3) Shall be tested for compliance with Subsection R315-261-1052(e)(2) initially upon designation, annually, and at other times as requested by the Director.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section R315-261-1060, it is exempt from the requirements of Subsections R315-261-1052(a) through (e).

R315-261-1053. Air Emission Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in Subsections R315-261-1053(h) and (i).

(b) Each compressor seal system as required in Subsection R315-261-1053(a) shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with

the requirements of Section R315-261-1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in Subsections R315-261-1053(a) through (c) shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in Subsection R315-261-1053(d) shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under Subsection R315-261-1053(e)(2), a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of Subsections R315-261-1053(a) and (b) if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section R315-261-1060, except as provided in Subsection R315-261-1053(i).

(i) Any compressor that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of Subsections R315-261-1053(a) through (h) if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section R315-261-1063(c).

(2) Is tested for compliance with Subsection R315-261-1053(i)(1) initially upon designation, annually, and at other times as requested by the Director.

R315-261-1054. Air Emission Standards: Pressure Relief Devices in Gas/Vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section R315-261-1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section R315-261-1060 is exempt from the requirements of Subsection R315-261-1054(a) and (b).

R315-261-1055. Air Emission Standards: Sampling Connection Systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in Subsection R315-261-1055(a) shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of Sections R315-261-1084 through1086 or a control device that complies with the requirements of Section R315-261-1060.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of Subsections R315-261-1055(a) and (b).

R315-261-1056. Air Emission Standards: Open-Ended Valves or Lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with Subsection R315-261-1056(a) at all other times.

R315-261-1057. Air Emission Standards: Valves in Gas/Vapor Service or in Light Liquid Service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Subsection R315-261-1063(b) and shall comply with Subsections R315-261-1057(b) through (e), except as provided in Subsections R315-261-1057(f), (g), and (h) and Sections R315-261-1061 and 1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.
(2) Replacement of bonnet bolts.
(3) Tightening of packing gland nuts.
(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Subsection R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsection R315-261-1057(a) if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in Subsection R315-261-1063(c).

(3) Is tested for compliance with Subsection R315-261-1057(f)(2) initially upon designation, annually, and at other times as requested by the Director.

(g) Any valve that is designated, as described in Subsection R315-261-1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1057(a).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in Subsection R315-261-1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before the effective date of Rule R315-261.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

R315-261-1058. Air Emission Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in subsection R315-261-1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under Subsection R315-261-1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined, e.g., porcelain, glass, or glass-lined, is exempt from the monitoring requirements of Subsection R315-261-1058(a) and from the recordkeeping requirements of Section R315-261-1064.

R315-261-1059. Air Emission Standards: Delay of Repair.

(a) Delay of repair of equipment for which leaks have been detected shall be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected shall be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves shall be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section R315-261-1060.

(d) Delay of repair for pumps shall be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown shall be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

R315-261-1060. Air Emission Standards: Closed-Vent Systems and Control Devices.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to Sections R315-261-1050 through 1064 shall comply with the provisions of Section R315-261-1033.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-261-1050 through 1064 on the effective date that the facility becomes subject to the provisions of Sections R315-261-1050 through 1064 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-261-1050 through 1064 for installation and startup.

(2) Any unit that begins operation after the effective date of rule R315-261 and is subject to the provisions of Sections R315-261-1050 through 1064 when operation begins, shall comply with the rules immediately, i.e., shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on

the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-261-1050 through 1064 shall comply with all requirements of Sections R315-261-1050 through 1064 as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by Sections R315-261-1050 through 1064 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-261-1050 through 1064. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of Sections R315-261-1050 through 1064 after the effective date of Rule R315-261, due to an action other than those described in Subsection R315-261-1060(b)(3) shall comply with all applicable requirements immediately, i.e., shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-261-1050 through 1064; the 30-month implementation schedule does not apply.

R315-261-1061. Air Emission Standards for Equipment Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in Subsection R315-261-1061(c) shall be conducted initially upon designation, annually, and at other times requested by the Director.

(2) If a valve leak is detected, it shall be repaired in accordance with Subsections R315-261-1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit shall be monitored within 1 week by the methods specified in Subsection R315-261-1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section R315-261-1057 for which leaks are detected by the total number of valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit.

R315-261-1062. Air Emission Standards for Equipment Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in Subsections R315-261-1062(b)(2) and (3).

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in Section R315-261-1057, except as described in Subsections R315-261-1062(b)(2) and (3).

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods, i.e., monitor for leaks once every six months, for the valves subject to the requirements in Section R315-261-1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods, i.e., monitor for leaks once every year, for the valves subject to the requirements in Section R315-261-1057.

(4) If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in Section R315-261-1057, but may again elect to use Section R315-261-1062 after meeting the requirements of Subsection R315-261-1057(c)(1).

R315-261-1063. Air Emission Standards for Equipment Leaks - Test Methods and Procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the test methods and procedures requirements provided in Section R315-261-1063.

(b) Leak detection monitoring, as required in Sections R315-261-1052 through1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Sections R315-261-1054, the test shall comply with the following requirements:

(1) The requirements of Subsections R315-261-1063(b)(1) through (4) shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats

the hazardous secondary material shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85, incorporated by reference under Section R315-260-11;

(2) Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in Subsection R315-261-1063(d)(1) or (2).

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in Subsection R315-261-1063(d)(1) or (2) can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86, incorporated by reference under Section R315-260-11.

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Subsections R315-261-1034(c)(1) through (4).

R315-261-1064. Air Emission Standards for Equipment Leaks - Recordkeeping Requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the recordkeeping requirements of Section R315-261-1064.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1050 through 1064 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material shall record and keep the following information at the facility:

(1) For each piece of equipment to which Sections R315-261-1050 through 1064 applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility, e.g., identify the hazardous secondary material management unit on a facility plot plan.

(iii) Type of equipment, e.g., a pump or pipeline valve.

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment, e.g., gas/vapor or liquid.

(vi) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals".

(2) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule as specified in Subsection R315-261-1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-261-1035(b)(3).

(4) Documentation of compliance with Section R315-261-1060, including the detailed design documentation or performance test results specified in Subsection R315-261-1035(b)(4).

(c) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Subsection R315-261-1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in Subsection R315-261-1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with Subsection R315-261-1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material, or designate, whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a

leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section R315-261-1060 shall be recorded and kept up-to-date at the facility as specified in Subsection R315-261-1035(c). Design documentation is specified in Subsections R315-261-1035(c)(1) and (2) and monitoring, operating, and inspection information in Subsections R315-261-1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in Sections R315-261-1052 through 1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment, except welded fittings, subject to the requirements of Sections R315-261-1050 through 1064.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Subsections R315-261-1052(e), 1053(i), and 1057(f).

(ii) The designation of this equipment as subject to the requirements of Subsection R315-261-1052(e), 1053(i), or 1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with Subsection R315-261-1054(a).

(4)(i) The dates of each compliance test required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Section R315-261-1054.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location, area or group, of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Subsections R315-261-1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with Section R315-261-1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at in the facility:

(1) Criteria required in Subsections R315-261-1052(d)(5)(ii) and 1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of Sections R315-261-1050 and other Sections of Rule R315-261:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in Sections R315-261-1052 through 1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections R315-261-1052 through 1060. The record shall include supporting documentation as required by Subsection R315-261-1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., changing the process that produced the material, that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in Sections R315-261-1052 through 1060, then a new determination is required.

(l) Records of the equipment leak information required by Subsection R315-261-1064(d) and the operating information required by Subsection R315-261-1064(e) need be kept only three years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to Sections R315-261-1050 through 1064 and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with Sections R315-261-1050 through 1064 either by documentation pursuant to Section R315-261-1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

R315-261-1080. Air Emission Standards for Tanks and Containers - Applicability.

(a) The regulations in Sections R315-261-1080 through 1089 apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

R315-261-1081. Air Emission Standards for Tanks and Containers - Definitions.

(a) As used in Sections R315-261-1080 through 1089, all terms not defined herein shall have the meaning given to them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Average volatile organic concentration or average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of Section R315-261-1084.

(2) "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere.

Closure devices include devices that are detachable from the cover; e.g., a sampling port cap; manually operated, e.g., a hinged access lid or hatch; or automatically operated, e.g., a spring-loaded pressure relief valve.

(3) "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

(4) "Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings, such as access hatches, sampling ports, gauge wells, that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

(5) "Empty hazardous secondary material container" means:

(a) A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and no more than 2.5 centimeters, one inch, of residue remain on the bottom of the container or inner liner;

(b) A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

(c) A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

(6) "Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

(7) "External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

(8) "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

(9) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

(10) "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

(11) "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

(12) "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 degrees C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 degrees C is equal to or greater than 20 percent by weight.

(13) "Internal floating roof" means a cover that rests or floats on the material surface, but not necessarily in complete contact with it, inside a tank that has a fixed roof.

(14) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

(15) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(16) "Material determination" means performing all applicable procedures in accordance with the requirements of Section R315-261-1084 to determine whether a hazardous secondary material meets standards specified in Sections R315-261-1080 through 1089. Examples of a material determination include performing the procedures in accordance with the requirements of Section R315-261-1084 to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

(17) "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions, i.e., temperature, agitation, pH effects of combining materials, etc., reasonably expected to occur in the tank. For the purpose of Sections R315-261-1080 through 1089, maximum organic vapor pressure is determined using the procedures specified in Subsection R315-261-1084(c).

(18) "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric, envelope, spans the annular space between the metal sheet and the floating roof.

(19) "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in Subsection R315-261-1084(d).

(20) "Point of material origination" means as follows:

(a) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under Subsection R315-261-4(a)(27).

Note to paragraph (a) of the definition of "Point of material origination: "In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

(b) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

(21) "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of Sections R315-261-1080 through 1089, a safety device is not used for routine venting of gases or vapors from the vapor

headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(22) "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

(23) "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

(24) "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of Section R315-261-1084. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3, at 25 deg. Celsius shall be included.

R315-261-1082. Air Emission Standards for Tanks and Containers - Standards: General.

(a) Section R315-261-1082 applies to the management of hazardous secondary material in tanks and containers subject to Sections R315-261-1080 through 1089.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit, except as provided for in Subsection R315-261-1082(c).

(c) A tank or container is exempt from standards specified in Sections R315-261-1084 through 1087, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in Subsection R315-261-1083(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

R315-261-1083. Air Emission Standards for Tanks and Containers - Material Determination Procedures.

(a) Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section R315-261-1082.

(2) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by Subsection R315-261-1083(a)(1), the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in Subsection R315-261-1083(a)(3) or by knowledge as specified in Subsection R315-261-1083(a)(4).

(3) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material

stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under Subsection R315-261-1083(a)(3)(ii)(C), shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 deg. Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 deg. Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment shall be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in Subsection R315-261-1083(a)(3)(iii)(A) or (B) and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X, which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 deg. Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations.

(A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with Subsections R315-261-1083(a)(3)(ii) and (iii) and the following equation:

The equation found in 40 CFR 261.1083(a)(3)(iv)(A), 2015 ed. is adopted and incorporated by reference.

Where:

C = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination "i" of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination "i" as determined in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii), i.e., the average of the four or more samples specified in Subsection R315-261-1083(a)(3)(ii)(B), ppmw.

(B) For the purpose of determining C_i, for individual material samples analyzed in accordance with Subsection R315-261-1083(a)(3)(iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(I) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(II) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 degrees Celsius.

(4) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual

chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Director and the remanufacture or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in Subsection R315-261-1083(a)(3) shall be used to establish compliance with the applicable requirements of Sections R315-261-1080 through 1089. The Director may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii).

(b) Reserved

(c) Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in Subsection R315-261-1084(c).

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in Subsection R315-261-1083(c)(3) or knowledge of the waste as specified by Subsection R315-261-1083(c)(4) to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," incorporated by reference - refer to Section R315-260-11;

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92, incorporated by reference - refer to Section R315-260-11; and

(E) Any other method approved by the Director.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in Subsection R315-261-1085(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with Sections R315-261-1080 through 1089:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air, less than 10 ppmv hydrocarbon in air, and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn, e.g., some pressure relief devices, the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in Subsection R315-261-1083(d)(9). If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and

the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

R315-261-1084. Air Emission Standards for Tanks and Containers - Standards: Tanks.

(a) The provisions of Section R315-261-1084 apply to the control of air pollutant emissions from tanks for which Subsection R315-261-1082(b) references the use of Section R315-261-1084 for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to Section R315-261-1084 in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in Subsection R315-261-1084(c) or the Tank Level 2 controls specified in Subsection R315-261-1084(d).

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with Subsection R315-261-1084(b)(1)(i).

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of Subsection R315-261-1084(d). An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in Subsection R315-261-1084(b)(1)(i).

(c) Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in Subsection R315-261-1084(c)(1) through (4):

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in Subsection R315-261-1083(c). Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in Subsection R315-261-1084(b)(1)(i), as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank, e.g., a removable cover mounted on an open-top tank, or may be an integral part of the tank structural design, e.g., a horizontal cylindrical tank equipped with a hatch.

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in Subsection R315-261-1084(c)(2)(iii)(B)(I) and (II).

(I) During periods when it is necessary to provide access to the tank for performing the activities of Subsection R315-261-1084(c)(2)(iii)(B)(II), venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(II) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the

hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in Subsection R315-261-1084(l).

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in Subsection R315-261-1084(e);

(2) A tank equipped with an external floating roof in accordance with the requirements specified in Subsection R315-261-1084(f);

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-261-1084(g);

(4) A pressure tank designed and operated in accordance with the requirements specified in Subsection R315-261-1084(h); or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in Subsection R315-261-1084(i).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in Subsections R315-261-1084(e)(1) through (3).

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents, vacuum breaker vents, and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed, i.e., no visible gaps. Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in Subsection R315-261-1084(e)(3)(iii):

(A) Visually inspect the internal floating roof components through openings on the fixed-roof, e.g., manholes and roof hatches, at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in Subsection R315-261-1084(e)(3)(ii) for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every five years.

(iv) Prior to each inspection required by Subsection R315-261-1084(e)(3)(ii) or (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-261-1084(e)(3)(iv)(B).

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(e).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in Subsections R315-261-1084(f)(1) through (3).

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters. If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters.

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents, vacuum breaker vents, and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device shall be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well shall be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of Subsections R315-261-1084(f)(3)(i)(A) and (B).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(I) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(II) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter diameter uniform probe passes freely, without forcing or binding against the seal, between the seal and the wall of the tank and measure the circumferential distance of each such location.

(III) For a seal gap measured under Subsection R315-261-1084(f)(3), the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(IV) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection R315-261-1084(f)(1)(ii).

(E) In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1)(ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(iii) Prior to each inspection required by Subsection R315-261-1084(f)(3)(i) or (ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under Subsection R315-261-1084(f)(3)(i), written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not

planned as provided for in Subsection R315-261-1084(f)(3)(iii)(C).

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(f).

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in Subsections R315-261-1084(g)(1) through (3).

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Section R315-261-1087.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(iv) In the event that a defect is detected, the remanufacture or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Subsection R315-261-1083(d).

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in Subsection R315-261-1084(h)(3)(i) or (h)(3)(ii).

(i) At those times when opening of a safety device, as defined in Section R315-261-1081, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section R315-261-1087.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant

emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in Subsections R315-261-1084(i)(1) through (4).

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of Subsections R315-261-1084(i)(1) and (2).

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in Section R315-261-1087.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to Section R315-261-1084 in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in Subsection R315-261-1084(j)(2), to the tank from another tank subject to Section R315-261-1084 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR - National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-261-1084(j)(1) do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in Subsection R315-261-1082(c)(1) at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-261-1082(c)(2).

(iii) The hazardous secondary material meets the requirements of Subsection R315-261-1082(c)(4).

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of Subsection R315-261-1084(c)(4), (e)(3), (f)(3), or (g)(3) as follows:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-261-1084(k)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-261-1080 through 1089, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of Sections R315-261-1080 through 1089, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of Section R315-261-1084, only those portions of the tank cover and those connections to the tank, e.g., fill ports, access hatches, gauge wells, etc., that are located on or above the ground surface.

R315-261-1086. Air Emission Standards for Tanks and Containers - Standards: Containers.

(a) Applicability. The provisions of Section R315-261-1086 apply to the control of air pollutant emissions from containers for which Subsection R315-261-1082(b) references the use Section R315-261-1086 for such air emission control.

(b) General requirements.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to Section R315-261-1086 in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-261-1086(d).

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, e.g., a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsection R315-261-1086(c)(1)(ii) or (iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices on such a container are not required to be secured in the closed position.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing

hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(c)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable U.S. Department of Transportation regulations as specified in Subsection R315-261-1086(f), are not managing hazardous secondary material in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container that operates with no detectable organic emissions as defined in Section R315-261-1081 and determined in accordance with the procedure specified in Subsection R315-261-1086(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-261-1086(h).

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(d) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacture or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(d)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-261-1086(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-261-1086(e)(2)(i) and (ii).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-261-1086(e)(1).

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall inspect and monitor the closed-vent systems and control devices as specified in Section R315-261-1087.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall prepare and maintain the records specified in Subsection R315-261-1089(d).

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(e) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsection R315-261-1086(c)(1)(i) or (d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

(3) For the purpose of complying with Sections R315-261-1080 through 1089, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of Subsection R315-261-1086(d)(1)(ii), the procedure specified in Subsection R315-261-1083(d) shall be used.

(1) Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for

the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-261-1086(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A.

(2) A pressure measurement device shall be used that has a precision of +/- 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

R315-261-1087. Air Emission Standards for Tanks and Containers - Standards: Closed-Vent Systems and Control Devices.

(a) Section R315-261-1087 applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of Sections R315-261-1080 through 1089.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in Subsection R315-261-1087(c).

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in Subsection R315-261-1033(k).

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in Subsection R315-261-1087(b)(3)(i) or a seal or locking device as specified in Subsection R315-261-1087(b)(3)(ii). For the purpose of complying with Subsection R315-261-1087(b)(3), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with Subsection R315-261-1087(b)(3), the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For Subsection R315-261-1087(b), a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with Subsection R315-261-1087(b)(3), the device shall be placed on the mechanism by which the bypass device position is controlled, e.g., valve handle, damper lever, when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in Subsection R315-261-1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of Subsection R315-261-1033(c); or

(iii) A flare designed and operated in accordance with the requirements of Subsection R315-261-1033(d).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements Section R315-261-1087 shall comply with the requirements specified in Subsections R315-261-1087(c)(2)(i) through (vi).

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of Subsection R315-261-1087(c)(2)(i), i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year, by recording the information specified in Subsection R315-261-1089(e)(1)(v).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction, i.e., periods when the control device is not operating or not operating normally, except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Subsection R315-261-1033(g) or (h).

(ii) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of Subsection R315-261-1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater,

condenser, or carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the requirements of Subsection R315-261-1033(j).

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of Subsection R315-261-1087(c)(1) as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in Subsection R315-261-1087(c)(5)(iii) or a design analysis as specified in Subsection R315-261-1087(c)(5)(iv) the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in Subsection R315-261-1033(e).

(iii) For a performance test conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in Subsections R315-261-1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the design analysis shall meet the requirements specified in Subsection R315-261-1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of Subsection R315-261-1087(c)(1) based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of Subsection R315-261-1087(c)(5)(iii). The Director may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Subsections R315-261-1033(f)(2) and (l). The readings from each monitoring device required by Subsection R315-261-1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements Section R315-261-1087.

R315-261-1088. Air Emission Standards for Tanks and Containers - Inspection and Monitoring Requirements.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with Sections R315-261-1080 through 1089 in accordance with the applicable requirements specified in Sections R315-261-1084 through 1087.

(b) The remanufacture or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by Subsection R315-261-1088(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

R315-261-1089. Air Emission Standards for Tanks and Containers - Recordkeeping Requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of Sections R315-261-1080 through 1089 shall record and maintain the information specified in Subsections R315-261-1089(b) through (j), as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections R315-261-1089(i) and (j), records required by Section R315-261-1089 shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections R315-261-1089(i) and (j) shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in Sections R315-261-1084 through 1087 in accordance with the conditions specified in Subsection R315-261-1080(b)(7) or (d), respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of Section R315-261-1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by Section R315-261-1084 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by Subsection R315-261-1089(b)(1), the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in Subsection R315-261-1084(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of Subsection R315-261-1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats

the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by Subsection R315-261-1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(c) Reserved

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of Subsection R315-261-1086 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of Subsection R315-261-1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in Subsection R315-261-1089(e)(1)(ii) or by performance tests as specified in Subsection R315-261-1089(e)(1)(iii) when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in Subsection R315-261-1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsection R315-261-1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in Subsection R315-261-1035(b)(3) and all test results.

(iv) Information as required by Subsections R315-261-1035(c)(1) and 261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in Subsections R315-261-1089(e)(1)(v)(A) and (B) for those planned routine maintenance operations that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in Subsections R315-261-1089(e)(1)(vi)(A) through (C) for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Subsection R315-261-1087(c)(3)(ii).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in Subsections R315-261-1082(c)(1) or (c)(2)(i) through (vi), shall prepare and maintain at the facility records documenting the information used for each material determination, e.g., test results, measurements, calculations, and other documentation. If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of Section R315-261-1083.

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to Subsection R315-261-

1084(l) or Subsection R315-261-1085(g) shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to Sections R315-261-1080 through 1089 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of Sections R315-261-1080 through 1089 by documentation either pursuant to Sections R315-261-1080 through 1089, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by Section R315-261-1089.

R315-261-1090. Appendix I to Rule R315-261 -- Representative Sampling Methods.

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, shall be considered by the Agency to be representative of the waste.

Extremely viscous liquid-ASTM Standard D140-70 Crushed or powdered material-ASTM Standard D346-75 Soil or rock-like material-ASTM Standard D420-69 Soil-like material-ASTM Standard D1452-65

Fly Ash-like material-ASTM Standard D2234-76, ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103

Containerized liquid waste-"COLIWASA."

Liquid waste in pits, ponds, lagoons, and similar reservoirs-"Pond Sampler."

This manual also contains additional information on application of these protocols.

R315-261-1091. Appendix VII to Rule R315-261-Basis for Listing Hazardous Waste.

TABLE

EPA hazardous waste No.	Hazardous constituents for which listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodi-benzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta- and hexachlorodibenzo-p- dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1-2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetra-chloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorbenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under Section R315-268-43, Table CCW.
F999	CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.

K006 Hexavalent chromium.
K007 Cyanide (complexed), hexavalent chromium.
K008 Hexavalent chromium.
K009 Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010 Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011 Acrylonitrile, acetonitrile, hydrocyanic acid.
K013 Hydrocyanic acid, acrylonitrile, acetonitrile.
K014 Acetonitrile, acrylamide.
K015 Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016 Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017 Epichlorohydrin, chloroethers (bis(chloromethyl) ether and bis (2-chloroethyl) ethers), trichloropropane, dichloropropanols.
K018 1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019 Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020 Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021 Antimony, carbon tetrachloride, chloroform.
K022 Phenol, tars (polycyclic aromatic hydrocarbons).
K023 Phthalic anhydride, maleic anhydride.
K024 Phthalic anhydride, 1,4-naphthoquinone.
K025 Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026 Paraldehyde, pyridines, 2-picoline.
K027 Toluene diisocyanate, toluene-2, 4-diamine.
K028 1,1,1-trichloroethane, vinyl chloride.
K029 1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030 Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031 Arsenic.
K032 Hexachlorocyclopentadiene.
K033 Hexachlorocyclopentadiene.
K034 Hexachlorocyclopentadiene.
K035 Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036 Toluene, phosphorodithioic and phosphorothioic acid esters.
K037 Toluene, phosphorodithioic and phosphorothioic acid esters.
K038 Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039 Phosphorodithioic and phosphorothioic acid esters.
K040 Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041 Toxaphene.
K042 Hexachlorobenzene, ortho-dichlorobenzene.
K043 2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044 N.A.
K045 N.A.
K046 Lead.
K047 N.A.
K048 Hexavalent chromium, lead.
K049 Hexavalent chromium, lead.
K050 Hexavalent chromium.
K051 Hexavalent chromium, lead.
K052 Lead.
K060 Cyanide, napthalene, phenolic compounds, arsenic.
K061 Hexavalent chromium, lead, cadmium.
K062 Hexavalent chromium, lead.
K069 Hexavalent chromium, lead, cadmium.
K071 Mercury.
K073 Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083 Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084 Arsenic.
K085 Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086 Lead, hexavalent chromium.
K087 Phenol, naphthalene.
K088 Cyanide (complexes).
K093 Phthalic anhydride, maleic anhydride.
K094 Phthalic anhydride.K095 1,1,2-trichloroethane, 1,1,1,2-
tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096 1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097 Chlordane, heptachlor.
K098 Toxaphene.
K099 2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100 Hexavalent chromium, lead, cadmium.
K101 Arsenic.
K102 Arsenic.
K103 Aniline, nitrobenzene, phenylenediamine.
K104 Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105 Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106 Mercury.
K107 1,1-Dimethylhydrazine (UDMH).
K108 1,1-Dimethylhydrazine (UDMH).
K109 1,1-Dimethylhydrazine (UDMH).
K110 1,1-Dimethylhydrazine (UDMH).
K111 2,4-Dinitrotoluene.
K112 2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K113 2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K114 2,4-Toluenediamine, o-toluidine, p-toluidine.
K115 2,4-Toluenediamine.
K116 Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117 Ethylene dibromide.
K118 Ethylene dibromide.
K123 Ethylene thiourea.
K124 Ethylene thiourea.
K125 Ethylene thiourea.
K126 Ethylene thiourea.
K131 Dimethyl sulfate, methyl bromide.
K132 Methyl bromide.
K136 Ethylene dibromide.
K141 Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142 Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143 Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144 Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145 Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147 Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148 Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K149 Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K150 Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K151 Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K156 Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157 Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158 Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159 Benzene, butylate, eptc, molinate, pebulate, vernolate.

K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

N.A.-Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

R315-261-1092. Appendix VIII to Rule 315-261-Hazardous Constituents.

Appendix VIII to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference, with the following addition:

(a) P999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-261-1093. Appendix IX to Rule 315-261-Hazardous Constituents.

Appendix IX to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference

KEY: hazardous waste
August 15, 2016 **19-6-105**
19-6-106

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.

(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. 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.

(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 R315-261-4 or 5, small 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.

R315-270-2. Hazardous Waste Permit Program -- Definitions.

The following definitions apply to Rules R315-270 and 124. Terms not defined in Section R315-270-2 have the meaning given by Section R315-260-10 and Section 19-6-102.

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(b) "Application" means the information required by the Director under Section R315-270-14 through 29.

(c) "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(d) "Closure" means the act of securing a Hazardous Waste Management facility pursuant to the requirements of Rule R315-264.

(e) "Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function, e.g., a pump seal, pump, kiln liner, kiln thermocouple.

(f) "Corrective Action Management Unit" or CAMU means an area within a facility that is designated by the Director under Sections R315-264-550 through 555 for the purpose of implementing corrective action requirements under Section R315-264-101 and RCRA section 3008(h). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(g) "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 92-217 and Pub. L. 95-576; 33 U.S.C. 1251 et seq.

(h) "Director" means the Director of the Division of Waste Management and Radiation Control.

(i) "Disposal" has the meaning as found in Section 19-6-102.

(j) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(k) "Draft permit" means a document prepared under Section R315-124-6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Section R315-124-5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Section R315-124-5 is not a "draft permit." A proposed permit is not a draft permit.

(l) "Elementary neutralization unit" means a device which:

(1) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or are listed in Sections R315-261-30 through 35 only

for this reason; and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Section R315-260-10.

(m) "Emergency permit" means a permit issued in accordance with Section R315-270-61.

(n) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(o) "EPA" means the United States Environmental Protection Agency.

(p) "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:

(1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(2)(i) A continuous on-site, physical construction program has begun; or

(ii) 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.

(q) "Facility mailing list" means the mailing list for a facility maintained by the Director in accordance with Subsection R315-124-10(c)(1)(ix).

(r) "Facility" or "activity" means any HWM facility or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under Sections 19-6-101 through 125.

(s) "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.

(t) "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(u) "Generator" means any person, by site location, whose act, or process produces "hazardous waste" identified or listed in Rule R315-261.

(v) "Ground water" means water below the land surface in a zone of saturation.

(w) "Hazardous waste" means a hazardous waste as defined in Section 19-6-102 and further defined in Section R315-261-3.

(x) "Hazardous Waste Management facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units, for example, one or more landfills, surface impoundments, or combinations of them.

(y) "HWM facility" means Hazardous Waste Management facility.

(z) "Injection well" means a well into which fluids are being injected.

(aa) "In operation" means a facility which is treating, storing, or disposing of hazardous waste.

(bb) "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.

(cc) "Manifest' means the shipping document originated and signed by the generator which contains the information required by Sections R315-262-20 through 27.

(dd) "National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an approved program.

(ee) "NPDES" means National Pollutant Discharge Elimination System.

(ff) "New HWM facility" means a Hazardous Waste Management facility which began operation or for which construction commenced after November 19, 1980.

(gg) "Off-site" means any site which is not on-site.

(hh) "On-site" means on the same or geographically contiguous property which may be divided by public or private right(s)-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(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

(ii) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under Sections 19-6-101 through 125.

(jj) "Permit" means an operation plan under Section 19-6-108 to implement the requirements of Rules R315-270 and 124. Permit includes permit by rule, Section R315-270-60, and emergency permit, Section R315-270-61. Permit does not include interim status, Sections R315-270-70 through 73, or any permit which has not been the subject of final action by the Director, such as a draft permit or a proposed permit.

(kk) "Permit-by-rule" means a provision of these rules stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

(ll) "Person" means person as defined in Subsection 19-1-103(4).

(mm) "Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

(nn) "POTW" means publicly owned treatment works.

(oo) "Publicly owned treatment works" 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 a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(pp) "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 U.S.C. 6901 et seq.

(qq) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(rr) "Remedial Action Plan" (RAP) means a special form of permit that a facility owner or operator may obtain instead of a permit issued under Sections R315-270-3 through 66, to authorize the treatment, storage or disposal of hazardous remediation waste, as defined in Section R315-260-10, at a remediation waste management site.

(ss) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, for example, actions, operations, or milestone events, leading to compliance with Sections 19-6-101 through 125 and rules adopted thereunder.

(tt) "SDWA" means the Safe Drinking Water Act, Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 3001 et seq.

(uu) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(vv) "State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(ww) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(xx) "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(yy) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(zz) "Treatment" means 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 wastes, 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.

(aaa) "UIC" means the Underground Injection Control Program under part C of the Safe Drinking Water Act, including an approved program.

(bbb) "Underground injection" means a well injection.

(ccc) "Underground source of drinking water" means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

(ddd) "USDW" means underground source of drinking water.

(eee) "Wastewater treatment unit" means a device which:

(1) Is part of a wastewater treatment facility which is subject to regulation under Rule R317-1 through 15; and

(2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in Section R315-261-3, or generates and accumulates a wastewater treatment sludge which 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

(3) Meets the definition of tank or tank system in Section R315-260-10.

R315-270-4. Hazardous Waste Permit Program -- Effect of a Permit.

(a)(1) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Rules R315-260 through 266, 268, 270 and 124 except for those requirements not included in the permit which:

(i) Become effective by statute;

(ii) Are promulgated under Rule R315-268 restricting the placement of hazardous wastes in or on the land;

(iii) Are promulgated under Rule R315-264 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and shall be implemented through the procedures of Section R315-270-42 Class 1 permit modifications; or

(iv) Are promulgated under 40 CFR 265.1030 through 1035, 1050 through 1064, or 1080 through 1090, which are adopted by reference limiting air emissions.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections R315-270-41 and 43, or the permit may be modified upon the request of the permittee as set forth in Section R315-270-42.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

R315-270-10. Hazardous Waste Permit Program -- General Application Requirements.

(a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:

(1) If you are covered by permits by rule, Section R315-270-60, you need not apply.

(2) If you currently have interim status, you shall apply for permits when required by the Director.

(3) If you are required to have a permit, including new applicants and permittees with expiring permits, you shall complete, sign, and submit an application to the Director, as described in Section R315-270-10 and Sections R315-270-70 through 73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in Section R315-270-61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in Section R315-270-65.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner shall also sign the permit application.

(c) Completeness.

(1) The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to the Director's satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in Subsection R315-270-10(j). The Director may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(2) The Director shall review for completeness every permit application. Each permit application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Director shall notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the Director shall list the information necessary to make the permit application complete. When the permit application is for an existing hazardous waste management facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Director shall notify the applicant that the permit application is complete upon receiving this information. After the permit application is complete, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

(3) If an applicant fails or refuses to correct deficiencies in the permit application, the permit application may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.

(d) Information requirements. All applicants for permits

shall provide information set forth in Section R315-270-13 and applicable sections in Sections R315-270-14 through 29 to the Director, using the application form provided by the Director, if the Director has made such forms available.

(e) Existing HWM facilities and interim status qualifications.

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under Sections 19-6-101 through 125 that render the facility subject to the requirement to have a permit shall submit part A of their permit application no later than:

(i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in Rules R315-265 or 266, or

(ii) Thirty days after the date they first become subject to the standards set forth in Rules R315-265 or 266, whichever first occurs.

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

(2) Reserved

(3) The Director may by compliance order extend the date by which the owner and operator of an existing hazardous waste management facility shall submit part A of their permit application.

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The Director may require submission of part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility shall submit a part B permit application in accordance with the dates specified in Section R315-270-73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under Sections 19-6-101 through 125 that render the facility subject to the requirement to have a permit shall submit a part B application in accordance with the dates specified in Section R315-270-73.

(5) Failure to furnish a requested part B application on time, or to furnish in full the information required by the part B application, is grounds for termination of interim status under Rule R315-124.

(f) New HWM facilities.

(1) Except as provided in Subsection R315-270-10(f)(3), no person shall begin physical construction of a new HWM facility without having submitted parts A and B of the permit application and having received a finally effective permit.

(2) An application for a permit for a new hazardous waste management facility, including both Parts A and B, may be filed any time after promulgation of those standards in Sections R315-264-170 through 1202 applicable to such facility. The application shall be filed with the Director. Except as provided in Subsection R315-270-10(f)(3), all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding Subsection R315-270-10(f)(1), the owner or operator of a facility approved for the incineration of polychlorinated biphenyls may, at any time after construction or operation of such facility has begun, file an application for a permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under Rule R315-261.

(g) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Director, within six months after the promulgation of revised regulations under Rule R315-261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Director no later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated previously, if the facility is treating storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of Section R315-270-72 for changes during interim status. Revised Part A applications necessary to comply with the provisions of Section R315-270-72 shall be filed with the Director.

(2) The owner or operator of a facility who fails to comply with the updating requirements of Subsection R315-270-10(g)(1) does not receive interim status as to the wastes not covered by duly filed part A applications.

(h) Reapplying for a permit. Owners and operators that have an effective permit and want to reapply for a new one, shall:

(1) Submit a new application at least 180 days before the expiration date of the effective permit, unless the Director allows a later date;

(2) The Director may not allow submittal of applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by Subsection R315-270-51(e)(2).

(i) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Subsection R315-270-10(d) and Sections R315-270-13 through 21 for a period of at least 3 years from the date the application is signed.

(j) Exposure information.

(1) Any part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information shall address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under Subsection R315-270-10(j)(1)(i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) Owners and operators of a landfill or a surface impoundment who have already submitted a part B application shall submit the exposure information required in Subsection R315-270-10(j)(1).

(k) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under Sections R315-270-32(b)(2) and 50(d).

(l) If the Director concludes, based on one or more of the factors listed in Subsection R315-270-10(l)(1) that compliance with the standards of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment

resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors, such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors, unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities, confirmation of which should be made through emissions testing;

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

R315-270-11. Hazardous Waste Permit Program -- Signatories to Permit Applications and Reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: By a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship; by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Director shall be signed by a person described in Subsection R315-270-11(a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in Subsection R315-270-11(a);

(2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under Subsection R315-270-11(b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subsection R315-270-11(b) shall be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d)(1) Any person signing a document under Subsection R315-270-11(a) or (b) shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under Sections R315-270-79 through 230, if the operator certifies according to Subsection R315-270-11(d)(1), then the owner may choose to make the following certification instead of the certification in Subsection R315-270-11(d)(1):

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

R315-270-12. Hazardous Waste Permit Program -- Confidentiality of Information.

(a) Any information provided to The Director under Rule R315-270 shall be made available to the public to the extent and in the manner authorized by Sections 63G-2-101 through 901.

(b) Any person who submits information to the Director in accordance with RuleR315-270 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in Section 63G-2-309. Information covered by such a claim shall be disclosed by the Director only to the extent, and by means of the procedures, set forth Sections 63G-2-101 through 901. However, if no claim under Sections 63G-2-101 through 804 accompanies the information when it is received by the Director, it may be made available to the public without further notice to the person submitting it.

(c) Claims of confidentiality for the name and address of any permit applicant or permittee shall be denied.

R315-270-13. Hazardous Waste Permit Program -- Contents of Part a of the Permit Application.

Part A of the permit application shall be submitted to the Director and include the following information:

(a) The activities conducted by the applicant which require it to obtain a permit under Section 19-6-108.

(b) Name, mailing address, and location, including latitude and longitude of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and phone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities,

(1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal

areas; and

(2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under Rule R315-261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under Sections 19-6-101 through 125 or under RCRA.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Reserved

(8) Dredge or fill permits under section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

R315-270-14. Hazardous Waste Permit Program -- Contents of Part B: General Requirements.

(a) Part B of the permit application consists of the general information requirements of Section R315-270-14, and the specific information requirements in Section R315-270-14 through 29 applicable to the facility. The part B information requirements presented in Sections R315-270-14 through 29 reflect the standards promulgated in Rule R315-264. These information requirements are necessary in order for the Director to determine compliance with the Rule R315-264 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in Section R315-270-11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in Section R315-270-28 is required in part B of the permit application.

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as Section R315-264-1 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Rule R315-264.

(3) A copy of the waste analysis plan required by Subsection R315-264-13(b) and, if applicable Subsection R315-264-13(c).

(4) A description of the security procedures and equipment required by Section R315-264-14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by Subsection R315-264-15(b). Include where applicable, as part of the inspection schedule, specific requirements in Section R315-264-174, Subsection R315-264-193(i), Sections R315-264-195, 226, 254, 273, 303, 602, 1033, 1052, 1053, 1058, 1084, 1085, 1086, and 1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Sections R315-264-30 through 37.

(7) A copy of the contingency plan required by Section R315-264-50 through 56. Include, where applicable, as part of the contingency plan, specific requirements in Sections R315-264-227, 255, and 200.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations, for example, ramps, special forklifts;

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, trenches;

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste, for example, protective clothing; and

(vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with Section R315-264-17 including documentation demonstrating compliance with Subsection R315-264-17(c).

(10) Traffic pattern, estimated volume, number, types of vehicles, and control, for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals.

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard, Subsection R315-264-18(a), the owner or operator of a new facility shall identify the political jurisdiction, e.g., county, township, or election district, in which the facility is proposed to be located. If the county or election district is not listed in appendix VI of Rule R315-264, no further information is required to demonstrate compliance with Subsection R315-264-18(a).

(ii) If the facility is proposed to be located in an area listed in appendix VI of Rule R315-264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault, which have displacement in Holocene time, within 3,000 feet of a facility are present, based on data from:

(1) Published geologic studies,

(2) Aerial reconnaissance of the area within a five-mile radius from the facility.

(3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults, to include lineations, which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration, trenching, of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults, which have had displacement in Holocene time, passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found. The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors, e.g., wave action, which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood. Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area, usually areas of the floodplain less than 200 feet in width, these areas shall be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(iv) Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units, e.g., tanks, incinerators, and flood protection devices, e.g., floodwalls, dikes, at the facility and how these will prevent washout.

(C) If applicable, and in lieu of Subsections R315-270-14(b)(11)(iv)(A) and (B), a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(I) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(II) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under Rules R315-270, 124, and 264 through 266.

(III) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(IV) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with Subsection R315-264-18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with Section R315-264-16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in Subsection R315-264-16(a)(3).

(13) A copy of the closure plan and, where applicable, the post-closure plan required by Sections R315-264-112, 118, and 197. Include, where applicable, as part of the plans, specific requirements in Sections R315-264-178, 197, 228, 258, 280, 310, 351, 601, and 603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under Section R315-264-119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with Section R315-264-142 and a copy of the documentation required to demonstrate financial assurance under Section R315-264-143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with Section R315-264-144 plus a copy of the documentation required to demonstrate financial assurance under Section R315-264-145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of Section R315-264-147. For a new facility, documentation showing the amount of insurance meeting the specification of Subsection R315-264-147(a) and, if applicable, Subsection R315-264-147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in Subsection R315-264-147(c).

(18) Where appropriate, proof of coverage by a State financial mechanism in compliance with Section R315-264-149 or Section R315-264-150.

(19) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters, 1 inch, equal to not more than 61.0 meters, 200 feet. Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters, 5 feet, if relief is greater than 6.1 meters, 20 feet, or an interval of 0.6 meters, 2 feet, if relief is less than 6.1 meters, 20 feet. Owners and operators of hazardous waste management facilities located in mountainous areas should use large contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittent streams.

(iv) Surrounding land uses, residential, commercial,

agricultural, recreational.

(v) A wind rose, i.e., prevailing wind-speed and direction.

(vi) Orientation of the map, north arrow.

(vii) Legal boundaries of the hazardous waste management facility site.

(viii) Access control, fences, gates.

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structure, recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within the hazardous waste management facility site, where hazardous waste is, or will be, treated, stored, or disposed, include equipment cleanup areas. For large hazardous waste management facilities the Director may allow the use of other scales on a case-by-case basis.

(20) Applicants may be required to submit such information as may be necessary to enable the Director to carry out his duties under State and Federal laws.

(21) For land disposal facilities, if a case-by-case extension has been approved under Section R315-268-5 or a petition has been approved under Section R315-268-6, a copy of the notice of approval for the extension or petition is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under Subsection R315-124-31(c).

(c) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in Subsection R315-264-90(b):

(1) A summary of the ground-water monitoring data obtained during the interim status period under 40 CFR 265.90 through 94, which are adopted by reference, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification, i.e., the information obtained from hydrogeologic investigations of the facility area.

(3) On the topographic map required under Subsection R315-270-14(b)(19), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under Section R315-264-95, the proposed location of ground-water monitoring wells as required under Section R315-264-97, and, to the extent possible, the information required in Subsection R315-270-14(c)(2).

(4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application was submitted that:

(i) Delineates the extent of the plume on the topographic map required under Subsection R315-270-14(b)(19);

(ii) Identifies the concentration of each appendix IX, of Rule R315-264, constituent throughout the plume or identifies the maximum concentrations of each appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of Section R315-264-97.

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of Section R315-264-98. This submission shall address the following items specified under Section R315-264-98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of Section R315-264-99. Except as provided in Subsection R315-264-98(h)(5), the owner or operator shall also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of Section R315-264-100, unless the owner or operator obtains written authorization in advance from the Director to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with Section R315-264-99, the owner or operator shall address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with Sections R315-264-97 and 99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in Subsection R315-264-94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of Section R315-264-97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under Section R315-264-94 Table 1, or if ground water monitoring conducted at the time of permit application under 40 CFR 265.90 through 94, which are adopted by reference, at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of Section R315-264-100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Director that alternate concentration limits will protect human health and the environment after considering the criteria listed in Subsection R315-264-94(b). An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of Section R315-264-99 and Subsection R315-270-14(c)(6). To demonstrate compliance with Section R315-264-100, the owner or operator shall address, at a minimum, the following items:

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the ground water as set forth in Section R315-264-94;

(iii) Detailed plans and an engineering report describing the corrective action to be taken; and

(iv) A description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action.

(v) The permit may contain a schedule for submittal of the information required in Subsections R315-270-14(c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Director prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under Subsection R315-270-14(b)(19).

(ii) Designation of type of unit.

(iii) General dimensions and structural description, supply any available drawings.

(iv) When the unit was operated.

(v) Specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units shall submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator shall conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a Facility Assessment that will determine if a more complete investigation is necessary

R315-270-15. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Containers.

Except as otherwise provided in Section R315-264-170, owners or operators of facilities that store containers of hazardous waste shall provide the following additional information:

(a) A description of the containment system to demonstrate compliance with Section R315-264-175. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with Subsection R315-264-175(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with Section R315-264-176, location of buffer zone and containers holding ignitable or reactive wastes, and Subsection R315-264-177(c), location of incompatible wastes, where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with Subsections R315-264-177(a) and (b), and Subsections R315-264-17(b) and (c).

(e) Information on air emission control equipment as required in Section R315-270-27.

R315-270-16. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Tank Systems.

Except as otherwise provided in Section R315-264-190, owners and operators of facilities that use tanks to store or treat hazardous waste shall provide the following additional information:

(a) A written assessment that is reviewed and certified by a qualified Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under Sections R315-264-191 and 192;

(b) Dimensions and capacity of each tank;

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls, e.g., vents;

(d) A diagram of piping, instrumentation, and process flow for each tank system;

(e) A description of materials and equipment used to provide external corrosion protection, as required under Subsection R315-264-192(a)(3)(ii);

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with Subsections R315-264-192(b), (c), (d), and (e);

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of Subsections R315-264-193(a), (b), (c), (d), (e), and (f);

(h) For tank systems for which a variance from the requirements of Section R315-264-193 is sought, as provided by Subsection R315-264-193(g):

(1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or

(2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.

(i) Description of controls and practices to prevent spills and overflows, as required under Subsection R315-264-194(b); and

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of Sections R315-264-198 and 199.

(k) Information on air emission control equipment as required in Section R315-270-27.

R315-270-17. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Surface Impoundments.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments shall provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of Section R315-264-19 and Sections R315-264-221through 223, addressing the following items:

(1) The liner system, except for an existing portion of a surface impoundment. If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-221(b), submit detailed plans and engineering and hydrogeologic

reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(2) The double liner and leak, leachate, detection, collection, and removal system, if the surface impoundment shall meet the requirements of Subsection R315-264-221(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsections R315-264-221(d), (e), or (f), submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance (CQA) plan if required under Section R315-264-19;

(5) Proposed action leakage rate, with rationale, if required under Section R315-264-222, and response action plan, if required under Section R315-264-223;

(6) Prevention of overtopping; and

(7) Structural integrity of dikes;

(c) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of Subsections R315-264-226(a), (b), and (d). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under Subsection R315-264-226(c). For new units, the owner or operator shall submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under Subsections R315-264-227(b) and (c). This information should be included in the contingency plan submitted under Subsection R315-270-14(b)(7);

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under Subsection R315-264-228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13);

(g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how Section R315-264-229 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how Section R315-264-230 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-231. This submission shall address the following items as specified in Section R315-264-231:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(j) Information on air emission control equipment as required in Section R315-270-27.

R315-270-18. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Waste Piles.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that store or treat hazardous waste in waste piles shall provide the following additional information:

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to Section R315-264-251 and Sections R315-264-90 through 101 as provided by Subsection R315-264-250(c) or Subsection R315-264-90(b)(2), an explanation of how the standards of Subsection R315-264-250(c) will be complied with or detailed plans and an engineering report describing how the requirements of Subsection R315-264-90(b)(2) will be met.

(c) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of Sections R315-264-19 and R315-264-251through 253, addressing the following items:

(1)(i) The liner system, except for an existing portion of a waste pile, if the waste pile shall meet the requirements of Subsection R315-264-251(a). If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-251(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate, detection; collection; and removal system, if the waste pile shall meet the requirements of Subsection R315-264-251(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsections R315-264-251(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under Section R315-264-19;

(v) Proposed action leakage rate, with rationale, if required under Section R315-264-252, and response action plan, if required under Section R315-264-253;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Subsections R315-264-254(a), (b), and (c). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of Section

R315-264-256 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how Section R315-264-257 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under Subsection R315-264-258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-310(a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13).

(i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a waste pile that is not enclosed, as defined in Section R315-264-250(c), is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-259. This submission shall address the following items as specified in Section R315-264-259:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

R315-270-19. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Incinerators.

Except as Subsection R315-264-340 and Subsection R315-270-19(e) provide otherwise, owners and operators of facilities that incinerate hazardous waste shall fulfill the requirements of Subsection R315-270-19(a), (b), or (c).

(a) When seeking an exemption under Subsection R315-264-340 (b) or (c), Ignitable, corrosive, or reactive wastes only:

(1) Documentation that the waste is listed as a hazardous waste in Sections R315-261-30 through 35 solely because it is ignitable, Hazard Code I, or corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in Sections R315-261-30 through 35 solely because it is reactive, Hazard Code R, for characteristics other than those listed in Subsection R315-261-23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Sections R315-261-20 through 24; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in Subsections R315-261-23(a)(1), (2), (3), (6), (7), or (8), and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section R315-270-62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Rule R315-261, appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Rule R315-261, appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on appropriate analytical techniques.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in Section R315-264-343.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in Subsection R315-270-19(c)(1). This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in Section R315-264-343,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with Sections R315-264-343 and 345 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Director finds necessary to achieve the purposes of Subsection R315-270-19(c).

(8) Waste analysis data, including that submitted in Subsection R315-270-19(c)(1), sufficient to allow the Director to specify as permit Principal Organic Hazardous Constituents, permit POHC's, those constituents for which destruction and removal efficiencies will be required.

(d) The Director shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under Section R315-264-345, operating conditions that will ensure that the performance standards in Section R315-264-343 shall be met by the incinerator.

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, the requirements of Section R315-270-19 do not apply, except those provisions the Director determines are necessary to ensure compliance with Subsections R315-264-345(a) and (c) if the owner or operator elect to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of Section R315-270-19, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k) and (l), R315-270-32(b)(2), and (b)(3).

R315-270-20. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Land Treatment Facilities.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that use land treatment to dispose of hazardous waste shall provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under Section R315-264-272. The description shall include the following information;

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test, e.g., column leaching, degradation;

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.

(b) A description of a land treatment program, as required under Section R315-264-271. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with Subsection R315-264-273(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content;

(3) Provisions for unsaturated zone monitoring, including:

(i) Sampling equipment, procedures, and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in Subsection R315-264-278(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to Section R315-264-13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of Section R315-264-273. This submission shall address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under Subsection R315-264-276(a) will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made.

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown;

(e) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of Subsection R315-264-276(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under Subsections R315-264-280(a)(8) and R315-264-280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under Subsection R315-270-14(b)(13);

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of Section R315-264-281 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how Section R315-264-282 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-283. This submission shall address the following items as specified in Section R315-264-283:

(1) The volume, physical, and chemical characteristics of

the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

R315-270-21. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Landfills.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that dispose of hazardous waste in landfills shall provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to meet the requirements of Sections R315-264-19 and Sections R315-264-301 through 303, addressing the following items:

(1)(i) The liner system, except for an existing portion of a landfill, if the landfill shall meet the requirements of Subsection R315-264-301(a). If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-301(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that shall, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate; detection; collection; and removal system; if the landfill shall meet the requirements of Subsection R315-264-301(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsection R315-264-301(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under Section R315-264-19;

(v) Proposed action leakage rate, with rationale, if required under Section R315-264-302, and response action plan, if required under Section R315-264-303;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Subsections R315-264-303(a), (b), and (c). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of Subsections R315-264-303(a) and (b). This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5).

(e) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with Subsection R315-264-310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with Subsection R315-264-310(b). This information should be included in the closure and post-closure plans submitted under Subsection R315-270-14(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the standards of Section R315-264-312 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how Section R315-264-313 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of Subsection R315-264-314(a) will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of Section R315-264-315 or Section R315-264-316, as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-317. This submission shall address the following items as specified in Section R315-264-317:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

R315-270-22. Hazardous Waste Permit Program Specific Part B Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to Section 19-6-108 permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR 63, subpart EEE, i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, the requirements of Section R315-270-22 do not apply. The requirements of Section R315-270-22 do apply, however, if the Director determines certain provisions are necessary to ensure compliance with Subsections R315-266-102(e)(1) and (e)(2)(iii) if the owner or operator elects to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the facility is an area source and the owner or operator elects to comply with the Sections R315-266-105 through 107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), R315-270-10(l), and Subsections R315-270-32(b)(2), and 32(b)(3).

(a) Trial burns

(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by Section R315-266-104, standards to

control particulate matter provided by Section R315-266-105, standards to control metals emissions provided by Section R315-266-106, or standards to control hydrogen chloride or chlorine gas emissions provided by Section R315-266-107 shall conduct a trial burn to demonstrate conformance with those standards and shall submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section R315-270-66.

(i) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of Sections R315-266-104 through 107 and Subsections R315-270-22(a)(2) through (a)(5); and

(ii) The owner or operator may submit data in lieu of a trial burn, as prescribed in Subsection R315-270-22 (a)(6).

(2) Waiver of trial burn for DRE

(i) Boilers operated under special operating requirements. When seeking to be permitted under Subsections R315-266-104(a)(4) and R315-266-110 that automatically waive the DRE trial burn, the owner or operator of a boiler shall submit documentation that the boiler operates under the special operating requirements provided by Section R315-266-110.

(ii) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by Subsections R315-266-104(a)(5) and R315-266-109(a) that waive the DRE trial burn, the owner or operator shall submit:

(A) Documentation that the device is operated in conformance with the requirements of Subsection R315-266-109(a)(1).

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of Rule R315-261, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained. The analysis shall rely on appropriate analytical techniques.

(C) Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in Subsection R315-270-22(a)(2)(ii)(B) using procedures provided by Subsection R315-266-109(a)(2)(ii).

(D) Results of emissions dispersion modeling for emissions identified in Subsection R315-270-22(a)(2)(ii)(C) using modeling procedures prescribed by Subsection R315-266-106(h). The Director shall review the emission modeling conducted by the applicant to determine conformance with these procedures. The Director shall either approve the modeling or determine that alternate or supplementary modeling is appropriate.

(E) Documentation that the maximum annual average ground level concentration of each constituent identified in Subsection R315-270-22(a)(2)(ii)(B) quantified in conformance with Subsection R315-270-22(a)(2)(ii)(D) does not exceed the allowable ambient level established in appendices IV or V of Rule R315-266. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in appendix IV or Risk-Specific Dose has not been established in appendix V is 0.1 micrograms per cubic meter, as noted in the footnote to appendix IV.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I, or adjusted Tier I, metals feed rate screening limits provided by Subsections R315-266-106 (b) and (e) that control metals emissions without requiring a trial burn, the owner or operator shall submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the concentration of each metal controlled by Subsection R315-266-106(b) or (e) in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(iii) Documentation of how the applicant shall ensure that the Tier I feed rate screening limits provided by Subsection R315-266-106(b) or (e) shall not be exceeded during the averaging period provided by Subsection R315-266-106(b) or (e);

(iv) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Subsections R315-266-106(b)(3) through (b)(5);

(v) Documentation of compliance with the provisions of Subsection R315-266-106(b)(6), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by Subsection R315-266-106(b)(7) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of Subsection R315-266-109(b) which waives the particulate standard, and trial burn to demonstrate conformance with the particulate standard, applicants shall submit documentation supporting conformance with Subsections R315-270-22(a)(2)(ii) and (a)(3).

(5) Waiver of trial burn for HCl and Cl_2. When seeking to be permitted under the Tier I, or adjusted Tier I, feed rate screening limits for total chloride and chlorine provided by Subsections R315-266-107(b)(1) and (e) that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl_2) without requiring a trial burn, the owner or operator shall submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(iii) Documentation of how the applicant shall ensure that the Tier I, or adjusted Tier I, feed rate screening limits provided by Subsection R315-266-107(b)(1) or (e) shall not be exceeded during the averaging period provided by Subsection R315-266-107(b)(1) or (e);

(iv) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Subsection R315-266-107(b)(3);

(v) Documentation of compliance with the provisions of Subsection R315-266-107(b)(4), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by Subsection R315-266-107(b)(3) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with Sections R315-266-104 through 107 and Section R315-270-66 by providing the information required by Section R315-270-66 from previous compliance testing of the device in conformance with Subsection R315-266-103, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by Section R315-270-66 shall be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating

information shall be provided. The Director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify, under Section R315-266-102, operating conditions that shall ensure conformance with Subsection R315-266-102(c). In addition, the following information shall be submitted:

(i) For a waiver from any trial burn:

(A) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

(B) The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

(C) Such supplemental information as the Director finds necessary to achieve the purposes of Subsection R315-270-22(a).

(ii) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in Subsection R315-266-104(a). This analysis should specify the constituents in appendix VIII, Rule R315-261, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(b) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under Subsection R315-266-104(f) shall submit the following information at a minimum:

(1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(2) Documentation of the proposed baseline flue gas HC, and CO, concentration, including data on HC, and CO, levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(3) Test burn protocol to confirm the baseline HC, and CO, level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content, or other appropriate measure of organic content, of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(4) Trial burn plan to:

(i) Demonstrate that flue gas HC, and CO, concentrations when burning hazardous waste do not exceed the baseline HC, and CO, level; and

(ii) Identify the types and concentrations of organic compounds listed in appendix VIII, Rule R315-261, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Director;

(5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(6) Such other information as the Director finds necessary to achieve the purposes of Subsection R315-270-22(b).

(c) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under Subsection R315-266-106(f), the owner or operator shall submit documentation specifying how the approach ensures compliance with the metals emissions standards of Subsection R315-266-106(c) or (d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Director finds necessary to achieve the purposes of Subsection R315-270-22(b).

(d) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(e) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles, containers, as defined in Section R315-266-111, directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by Section R315-266-111.

(f) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of Section R315-266-112 shall submit information adequate to demonstrate conformance with those provisions.

R315-270-23. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Miscellaneous Units.

Except as otherwise provided in Section R315-264-600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units shall provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of Sections R315-264-601 and 602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of Section R315-264-603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of Section R315-264-601. If the applicant can demonstrate that he does not violate the environmental performance standards of Section R315-264-601 and the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(e) Any additional information determined by the Director to be necessary for evaluation of compliance of the unit with the environmental performance standards of Section R315-264-601.

R315-270-24. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Process Vents.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that have process vents to which Sections R315-264-1030 through 1036 applies shall provide the following additional information:

(a) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Sections R315-264-1030 through 1036 on the effective date that the facility becomes subject to the provisions of Sections R315-264-1030 through 1036 or 40 CFR 265.1030 through 1035, which are adopted by reference, an implementation schedule as specified in Subsection R315-264-1033(a)(2).

(b) Documentation of compliance with the process vent standards in Section R315-264-1032, including:

(1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, i.e., the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, e.g., identify the hazardous waste management units on a facility plot plan.

(2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or concentrations, that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(3) Information and data used to determine whether or not a process vent is subject to the requirements of Section R315-264-1032.

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of Section R315-264-1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-264-1035(b)(3).

(d) Documentation of compliance with Section R315-264-1033, including:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by Subsection R315-264-1033(k).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Subsection R315-264-1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-264-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

R315-270-25. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Equipment.

Except as otherwise provided in Subsection R315-264-1, owners and operators of facilities that have equipment to which Sections R315-264-1050 through 1065 applies shall provide the following additional information:

(a) For each piece of equipment to which Sections R315-264-1050 through 1065 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility, e.g., identify the hazardous waste management unit on a facility plot plan.

(3) Type of equipment, e.g., a pump or pipeline valve.

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment, e.g., gas/vapor or liquid.

(6) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals".

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Sections R315-264-1050 through 1065 on the effective date that the facility becomes subject to the provisions of Sections R315-264-1050 through 1065 or 40 CFR 265.1050 through 1064, which are adopted by reference, an implementation schedule as specified in Subsection R315-264-1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-264-1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in Sections R315-264-1052 through 1059. This documentation shall contain the records required under Section R315-264-1064. The Director may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with Section R315-264-1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by Subsection R315-264-1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Subsection R315-264-1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

R315-270-26. Hazardous Waste Permit Program -- Special Part B Information Requirements for Drip Pads.

Except as otherwise provided by Subsection R315-264-1, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads shall provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to Sections R315-264-90 through 101, as provided by Subsection R315-264-90, detailed plans and an engineering report describing how the requirements of Subsection R315-264-90(b)(2) shall be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of Section R315-264-573, including the as-built drawings and specifications. This submission shall address the following items as specified in

Section R315-264-571:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section R315-264-573. This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5).

(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of Subsection R315-264-573(a) through (f).

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under Subsection R315-264-575(a). For any waste not to be removed from the drip pad upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-310 (a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13).

R315-270-27. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Air Emission Controls for Tanks, Surface Impoundments, and Containers.

(a) Except as otherwise provided in Section R315-264-1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of Sections R315-264-1080 through 1090, shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to Subsection R315-264-1084(d)(1) or (d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in Subsection R315-264-1084(e)(1) or (f)(1).

(2) Identification of each container area subject to the requirements of Sections R315-264-1080 through 1090 and certification by the owner or operator that the requirements of Sections R315-270-10 through 29 are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of Subsection R315-264-1084(d)(5) or 1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Subsection R315-264-1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Subsection R315-264-1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section R315-264-1087 that includes design and performance information as specified in Subsections R315-270-24(c) and (d).

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR 265.1080 through 1090, which are adopted by reference, cannot comply with Sections R315-264-1080 through 1090 by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082, which is adopted by reference.

R315-270-28. Hazardous Waste Permit Program -- Part B Information Requirements for Post-Closure Permits.

For post-closure permits, the owner or operator is required to submit only the information specified in Subsections R315-270-14(b)(1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), (c), and (d), unless the Director determines that additional information from Sections R315-270-14, 16, 17, 18, 20, or 21 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in Subsection R315-270-1(c)(7).

R315-270-29. Hazardous Waste Permit Program -- Permit Denial.

The Director may, pursuant to the procedures in Rule R315-124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

R315-270-30. Hazardous Waste Permit Program -- Conditions Applicable to All Permits.

The following conditions apply to all hazardous waste facility permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

(a) Duty to comply. The permittee shall comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See Section R315-270-61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of Sections 19-6-101 through 125 and is

grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment; practices; or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by Sections 19-6-101 through 125, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by Subsection R315-264-73(b)(9), and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) Signatory requirements. All applications, reports, or information submitted to the Director shall be signed and certified. See Section R315-270-11.

(l) Reporting requirements

(1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in Section R315-270-42, until:

(i) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in Subsection R315-270-30(l)(2)(i), the permittee has not received notice from the Director of the Director's intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Sections 19-6-101 through 125. See Section R315-270-40.

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five day written notice requirement in favor of a written report within 15 days.

(7) Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee shall submit a letter report, including a copy of the manifest, to the Director. See Section R315-264-72.

(8) Unmanifested waste report: This report shall be submitted to the Director within 15 days of receipt of unmanifested waste. See Section R315-264-76

(9) Biennial report: A biennial report shall be submitted covering facility activities during odd numbered calendar years. See Section R315-264-75.

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under Subsections R315-270-30(l)(4), (5), and (6), at the time monitoring reports are submitted. The reports shall contain the information listed in Subsections R315-270-30(l)(6).

(11) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) Information repository. The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in Subsection R315-124-33(b). The information repository shall be governed by the provisions in Subsections R315-124-124-33(c) through (f).

R315-270-31. Hazardous Waste Permit Program -- Requirements for Recording and Reporting of Monitoring Results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Rules R315-264 and 266. Reporting shall be no less frequent than specified in the above regulations.

R315-270-32. Hazardous Waste Permit Program -- Establishing Permit Conditions.

(a) In addition to conditions required in all permits (Section R315-270-30) the Director shall establish conditions, as required on a case-by-case basis, in permits under Section R315-270-50 (duration of permits), Subsection R315-270-33(a) (schedules of compliance), and Section R315-270-31 (monitoring).

(b)(1) Each permit shall include permit conditions necessary to achieve compliance with Sections 19-6-101 through 125 and rules adopted thereunder, including each of the applicable requirements specified in Rules R315-264, 266 , and 268. In satisfying this provision, the Director may incorporate applicable requirements of Rules R315-264, 266, and 268 directly into the permit or establish other permit conditions that are based on these rules.

(2) Each permit issued under Section 19-6-108 shall contain terms and conditions as the Director determines necessary to protect human health and the environment.

(3) If, as the result of an assessment(s) or other information, the Director determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, Rule R315-264 or 266 to ensure protection of human health and the environment, he shall include those terms and conditions in a permit for a hazardous waste combustion unit.

(c) An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Section R315-270-41.

(d) New or reissued permits, and to the extent allowed under Section R315-270-41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Section R315-270-32 and in Section R315-270-31.

(e) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

R315-270-33. Hazardous Waste Permit Program -- Schedules of Compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with Sections 19-6-101 through 125 and rules adopted thereunder.

(1) Time for compliance. Any schedules of compliance under Section R315-270-33 shall require compliance as soon as possible.

(2) Interim dates. Except as provided in Subsection R315-270-33(b)(1)(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing, of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities; by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements; rather than continue to operate and meet permit

requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term shall include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subsection R315-270-33(b)(3)(i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as resolution of the board of directors of a corporation.

R315-270-40. Hazardous Waste Permit Program -- Transfer of Permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Subsection R315-270-40(b) or 41(b)(2), to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with Section R315-270-42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Sections R315-264-140 through 151 until the new owner or operator has demonstrated that he or she is complying with the requirements of Sections R315-264-140 through 151. The new owner or operator shall demonstrate compliance with Sections R315-264-140 through 151 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Sections R315-264-140 through 151, the Director shall notify the old owner or operator that he or she no longer needs to comply with Sections R315-264-140 through 151 as of the date of demonstration.

R315-270-41. Hazardous Waste Permit Program -- Modification or Revocation and Reissuance of Permits.

When the Director receives any information; for example, inspects the facility, receives information submitted by the permittee as required in the permit, see Section R315-270-30, receives a request for revocation and reissuance under Section R315-124-5 or conducts a review of the permit file; the Director may determine whether one or more of the causes listed in Subsections R315-270-41(a) and (b) for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection R315-270-41(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Subsection R315-124-5(c)(2). If cause does not exist under Section R315-270-41, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of Subsection R315-270-42. Otherwise, a draft permit shall be prepared and other procedures in Rule R315-124 followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(4) Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in Section R315-270-41, when a permit for a land disposal facility is reviewed by the Director under Subsection R315-270-50(d), the Director shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Rules R315-124, 260 through 266, and 270.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under Section R315-270-43, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification; as required in the permit, see Subsection R315-270-30(l)(3); of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards

indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

R315-270-42. Hazardous Waste Permit Program -- Permit Modification at the Request of the Permittee.

(a) Class 1 modifications.

(1) Except as provided in Subsection R315-270-42(a)(2), the permittee may put into effect Class 1 modifications listed in appendix I of Section R315-270-42 under the following conditions:

(i) The permittee shall notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by Sections R315-270-13 through 21, 62, and 63.

(ii) The permittee shall send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with Subsection R315-124-10(c)(1)(ix), and the appropriate units of State and local government, as specified in Subsection R315-124-10(c)(1)(x). This notification shall be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Director approval, the notification shall be made within 90 calendar days after the Director approves the request.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director shall inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee shall comply with the original permit conditions.

(2) Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in Subsection R315-270-42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee shall inform the Director of this decision in the notice required in Subsection R315-270-42(b)(1).

(b) Class 2 modifications.

(1) For Class 2 modifications, listed in appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Sections R315-270-13 through 21, 62, and 63.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsections R315-124-10(c)(1)(ix) and (x) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a 60-day comment period, in accordance with Subsection R315-270-42(b)(5), and the name and address of an Agency contact to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with Subsection R315-270-42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(b)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Division contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director shall:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that the Director will decide on the request within the next 30 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, the Director shall, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in Subsection R315-270-42(b)(6)(ii) by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal action by the Director. The authorized activities shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of Rule R315-265. If the Director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in Section R315-270-42(b)(6)(i), (ii), or (iii), such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under Subsection R315-270-42(b)(6)(iii), or a temporary authorization under Subsection R315-270-42(b)(6)(i)(D) or (ii)(D), if the

Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee shall within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(2) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee shall receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in Subsection R315-270-42(b)(6)(iv)(A), the effective date of the permanent authorization shall be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in Subsection R315-270-42(b)(6)(vii), if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under Section R315-270-41 or 42. The activities authorized under Subsection R315-270-42(b) shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of Rule R315-265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director shall consider all written comments submitted during the public comment period and shall respond in writing to all significant comments in the Director's decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under Subsection R315-270-42(b)(6)(i) through (iii) for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of Rule R315-264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) Class 3 modifications.

(1) For Class 3 modifications listed in appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Sections R315-270-13 through 22, 62, 63, and 66.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsection R315-124-10(c)(1)(ix) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a 60-day comment period, and a name and address of the Director to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with Subsection R315-270-42(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a Division contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Division's contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(c)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Director.

(6) After the conclusion of the 60-day comment period, the Director shall grant or deny the permit modification request according to the permit modification procedures of Rule R315-124. In addition, the Director shall consider and respond to all significant written comments received during the 60-day comment period.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in appendix I of Section R315-270-42, the permittee may submit a Class 3 modification request to the Director, or the permittee may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, the permittee shall provide the Director with the necessary information to support the requested classification.

(2) The Director shall make the determination described in Subsection R315-270-42(d)(1) as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the wastes managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations,

where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with Subsection R315-270-42(e). Temporary authorizations shall have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in Subsection R315-270-42(e)(3)(ii), and

(B) Any Class 3 modification that meets the criteria in Subsection R315-270-42(e)(3)(ii)(A)or (B); or that meets the criteria in Subsections R315-270-42(e)(3)(ii)(C) through (E) and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request shall include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Rule R315-264 standards.

(iii) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Director and to appropriate units of State and local governments as specified in Subsection R315-124-10(c)(ix). This notification shall be made within seven days of submission of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director shall find:

(i) The authorized activities are in compliance with the standards of Rule R315-264.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with Rule R315-268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with Subsection R315-270-42(b)(6)(i)(D) or (ii)(D), or

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of Subsection R315-270-42(c) are conducted.

(f) Public notice and appeals of permit modification decisions.

(1) The Director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under Section R315-270-42 to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under Subsection R315-270-42(b)(6)(iii) or (v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under Section R315-270-42 may be appealed under the permit appeal procedures of Section R315-124-19.

(3) An automatic authorization that goes into effect under Subsection R315-270-42(b)(6)(iii) or (v) may be appealed under the permit appeal procedures of Section R315-124-19; however, the permittee may continue to conduct the activities pursuant to the automatic authorization unless and until a final determination is made.

(g) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Rule R315-261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Rules R315-265 and 266;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to hazardous waste management standards;

(v) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Rule R315-265 for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the permittee shall lose authority to operate under Section R315-270-42.

(2) New wastes or units added to a facility's permit under Subsection R315-270-42(g) do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) Reserved.

(i) Permit modification list. The Director shall maintain a list of all approved permit modifications and shall publish a notice once a year in a State-wide newspaper that an updated list is available for review.

(j) Combustion facility changes to meet 40 CFR 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under appendix I of Section R315-270-42, section L(9).

(1) Facility owners or operators shall have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR part 63 Section 63.1200-63.1499 revised as of July 1, 2000) in order to request a permit modification under Section R315-270-42 for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

(2) Facility owners or operators shall comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under Section R315-270-42 for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221

standards promulgated on October 12, 2005.

(3) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at the Director's discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

(k) Waiver of permit conditions in support of transition to the 40 CFR 63 MACT standards.

(1) the permittee may request to have specific operating and emissions limits waived by submitting a Class 1 permit modification request under appendix I of Section R315-270-42, section L(10). The permittee shall:

(i) Identify the specific RCRA permit operating and emissions limits which the permittee is requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, at the Director's discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation, renewable at the discretion of the Director, the permittee shall:

(i) Submit a modification request to the Director at the same time test plans are submitted to the Director; and

(ii) The Director may elect to approve or deny the request continent upon approval of the test plans.

Table

Appendix I to Section R315-270-42 -- Classification of Permit Modification

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components, e.g., pipes, valves, pumps, conveyors, controls	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes,	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Director	[1]1
b. Extension of final compliance date	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director	[1]1
7. Changes in ownership or operational control of a facility, provided the procedures of Subsection R315-270-40(b) are followed	[1]1
8. Changes to remove permit conditions that are no longer applicable, i.e., because the standards upon which they are based are no longer applicable to the facility.	[1]1
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of Section R315-261-4.	[1]1
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of Section R315-261-4.	[1]1
B. General Facility Standards	
1. Changes to waste sampling or analysis methods	
a. To conform with agency guidance or regulations	1
b. To incorporate changes associated with F039, multi-source leachate, sampling or analysis methods	1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	[1]1
d. Other changes	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
3. Changes in procedures for maintaining the operating record	1
4. Changes in frequency or content of inspection schedules	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees	2
b. Other changes	1
6. Contingency plan:	
a. Changes in emergency procedures, i.e., spill or release response procedures	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1
c. Removal of equipment from emergency equipment list	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications	1
b. Other changes	2
Note: When a permit modification, such as introduction of a new unit, requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.	
C. Ground-Water Protection	
1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Director	[1]1
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Director	[1]1
4. Changes in point of compliance	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits, including ACLs:	
a. As specified in the groundwater protection standard	3
b. As specified in the detection monitoring program	2
6. Changes to a detection monitoring program as required by Subsection R315-264-98(h), unless otherwise specified in this appendix	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by Sections R315-264-98(g)(4) and R315-264-99	3
b. Changes to a compliance monitoring program as required by Subsection R315-264-99(j), unless otherwise specified in this appendix	2
8. Corrective action program:	
a. Addition of a corrective action program as required by Subsection R315-264-99(h)(2) and Section R315-264-100	3
b. Changes to a corrective action program as required by Subsection R315-264-100(h), unless otherwise specified in this appendix	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Director	[1]1

b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director [1]1

c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Director [1]1

d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Director [1]1

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix 2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under Subsections R315-264-113(d) and (e) 2

2. Creation of a new landfill unit as part of closure 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments 3

b. Incinerators 3

c. Waste piles that do not comply with Subsection R315-264-250(c) 3

d. Waste piles that comply with Subsection R315-264-250(c) 2

e. Tanks or containers, other than specified below 2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Director [1]1

g. Staging piles 2

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan 1

2. Extension of post-closure care period 2

3. Reduction in the post-closure care period 3

4. Changes to the expected year of final closure, where other permit conditions are not changed 1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below 3

b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below 2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in Subsection R315-268-8(a)(2)(ii), with prior approval of the Director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 [1]1

2.

a. Modification of a container unit without increasing the capacity of the unit 2

b. Addition of a roof to a container unit without alteration of the containment system 1

3. Storage of different wastes in containers, except as provided in (F)(4) below:

a. That require additional or different management practices from those authorized in the permit 3

b. That do not require additional or different management practices from those authorized in the permit 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028) [1]1

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, e.g., incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 [1]1

G. Tanks

1.

a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below 3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below 2

c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2

d. After prior approval of the Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation [1]1

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit," with prior approval of the Director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 [1]1

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided

-The capacity difference is no more than 1500 gallons,

-The facility's permitted tank capacity is not increased, and

-The replacement tank meets the same conditions in the permit. 1

4. Modification of a tank management practice 2

5. Management of different wastes in tanks:

a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below 3

b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d) 2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are [1]1

to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." The modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, e.g., incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 — 1

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity — 3
2. Replacement of a surface impoundment unit — 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system — 2
4. Modification of a surface impoundment management practice0 — 2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit — 3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit — 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the unit meets the minimum technological requirements stated in Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 — 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type, for example, incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 — 1
6. Modifications of unconstructed units to comply with Subsection R315-264-221(c) and 226(d), and Sections R315-264-222, and 223 — [1]1
7. Changes in response action plan:
   a. Increase in action leakage rate — 3
   b. Change in a specific response reducing its frequency or effectiveness — 3
   c. Other changes — 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes,

I. Enclosed Waste Piles. For all waste piles except those complying with Subsection R315-264-250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with Subsection R315-264-250(c).

1. Modification or addition of waste pile units:
   a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity — 3
   b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity — 2
2. Modification of waste pile unit without increasing the capacity of the unit — 2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit — 1
4. Modification of a waste pile management practice — 2
5. Storage or treatment of different wastes in waste piles:
   a. That require additional or different management practices or different design of the unit — 3
   b. That do not require additional or different management practices or different design of the unit — 2
6. Conversion of an enclosed waste pile to a containment building unit — 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity — 3
2. Replacement of a landfill — 3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system — 3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system — 2
5. Modification of a landfill management practice — 2
6. Landfill different wastes:
   a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system — 3
   b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system — 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the landfill unit meets the minimum technological requirements stated in Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 — 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the landfill has previously received wastes of the same type, for example, incinerator ash. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 — 1
7. Modifications of unconstructed units to comply with Subsection R315-264-251(c), Sections R315-264-252 and 253, Subsections R315-264-254(c) and R315-264-301(c), Section R315-264-302, Subsection R315-264-303(c), and Section R315-264-304 — [1]1
8. Changes in response action plan:
   a. Increase in action leakage rate — 3
   b. Change in a specific response reducing its frequency or effectiveness — 3
   c. Other changes — 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.,

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent — 3
2. Modification of run-on control system — 2
3. Modify run-off control system — 3
4. Other modifications of land treatment unit component specifications or standards required in permit — 2
5. Management of different wastes in land treatment units:

a. That require a change in permit operating conditions or unit design specifications	3
b. That do not require a change in permit operating conditions or unit design specifications	2
Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes	
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application	3
b. Decrease rate of waste application	1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to Subsection R315-264-278(g)(2)	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid	2
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Director's prior approval has been received	[1]1
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Director	[1]1
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3
18. Changes in vegetative cover requirements for closure	2
L. Incinerators, Boilers, and Industrial Furnaces:	
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit	2
Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Director	[1]1
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director	[1]1

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1]1
8. Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit	1
9. Technology changes needed to meet standards under 40 CFR part 63 (Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Subsection R315-270-42(j) are followed.	[1]1
10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Subsection R315-270-42(k) are followed.	
M. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased	1
b. The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2
N. Corrective Action:	
1. Approval of a corrective action management unit pursuant to Section R315-264-552	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to Section R315-264-553	2
3. Approval of a staging pile or staging pile operating term extension pursuant to Section R315-264-554	2
O. Burden Reduction	
1. Reserved	
2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to Subsection R315-264-52(b)	1
3. Changes to recordkeeping and reporting requirements pursuant to: Subsections R315-264-56(i), R315-264-343(a)(2), R315-264-1061(b)(1),(d), R315-264-1062(a)(2), R315-264-196(f), R315-264-100(g), and R315-264-113(e)(5)	1
4. Changes to inspection frequency for tank systems pursuant to Subsection R315-264-195(b)	1
5. Changes to detection and compliance monitoring program pursuant to Subsections R315-264-98(d), (g)(2), and (g)(3), R315-264-99(f), and (g)	1

[1]Class 1 modifications requiring prior Agency approval.

R315-270-43. Hazardous Waste Permit Program -- Termination of Permits.

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Director shall follow the applicable procedures in Rule R315-124 in terminating any permit under Section R315-270-43.

R315-270-50. Hazardous Waste Permit Program -- Duration of Permits.

(a) Hazardous Waste operation permits shall be effective for a fixed term not to exceed 10 years.

(b) Except as provided in Section R315-270-51, the term of a permit shall not be extended by modification beyond the maximum duration specified in Section R315-270-50.

(c) The Director may issue any permit for a duration that is less than the full allowable term under Section R315-270-50.

(d) Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section R315-270-41.

R315-270-51. Hazardous Waste Permit Program -- Continuation of Expiring Permits.

(a) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under Section R315-270-14 and the applicable sections in Sections R315-270-15 through 29 which is a complete application for a new permit; and

(2) The Director through no fault of the permittee, does not issue a new permit with an effective date under Section R315-124-15 on or before the expiration date of the previous permit, for example, when issuance is impracticable due to time or resource constraints.

(b) Effect. Permits continued under Section R315-270-51 remain fully effective and enforceable.

(c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under Section R315-124-6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Rule R315-124 with appropriate conditions; or

(4) Take other actions authorized by these rules.

(d) State continuation. If a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

R315-270-60. Hazardous Waste Permit Program -- Permits by Rule.

Notwithstanding any other provision of Section R315-270-60 or Rule R315-124, the following shall be deemed to have a approved hazardous waste permit if the conditions listed are met:

(a) Reserved

(b) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under Rule R317-7 and 40 CFR 144 or 145; and

(2) Complies with the conditions of that permit and the requirements of 40 CFR 144.14 and Section R317-7-11.

(3) For UIC permits issued after November 8, 1984:

(i) Complies with Section R315-264-101; and

(ii) Where the UIC well is the only unit at a facility which

requires a hazardous waste permit, complies with Subsection R315-270-14(d).

(c) Publicly owned treatment works. The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

(1) Has an NPDES permit;

(2) Complies with the conditions of that permit; and

(3) Complies with the following regulations:

(i) Section R315-264-11, Identification number;

(ii) Section R315-264-71, Use of manifest system;

(iii) Section R315-264-72, Manifest discrepancies;

(iv) Section R315-264-73(a) and (b)(1), Operating record;

(v) Section R315-264-75, Biennial report;

(vi) Section R315-264-76, Unmanifested waste report; and

(vii) For NPDES permits issued after November 8, 1984, Section R315-264-101.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

R315-270-61. Hazardous Waste Permit Program -- Emergency Permits.

(a) Notwithstanding any other provision of Rule R315-270 or Rule R315-124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit:

(1) To a non-permitted facility to allow treatment, storage, or disposal of hazardous waste; or

(2) To a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if the Director determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under Subsection R315-124-10(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted hazardous waste management facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of Rule R315-270 and Rules R315-264 and 266.

R315-270-62. Hazardous Waste Permit Program -- Hazardous Waste Incinerator Permits.

When an owner or operator of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in Subsection R307-214-2(39), i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d), which are incorporated by reference in Subsection R307-214-2(39), documenting compliance with all applicable requirements of Subsection R307-214-2(39), the requirements of Section R315-270-62 do not apply, except those provisions the Director determines are necessary to ensure compliance with Subsections R315-264-345(a) and (c) if the owner or operator elects to comply with Section R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of Section R315-270-62, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), 10(l), 32(b)(2), and 32(b)(3).

(a) For the purposes of determining operational readiness following completion of physical construction, the Director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section R315-270-42.

(1) Applicants shall submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of Section R315-264-343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section R315-264-345.

(2) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section R315-264-343.

(b) For the purposes of determining feasibility of compliance with the performance standards of Section R315-264-343 and of determining adequate operating conditions under Section R315-264-345, the Director shall establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under Subsection R315-270-62(b)(2) with a part B of the permit application.

(2) The trial burn plan shall include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity (if applicable), or description of the physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Rule R315-261, appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Rule R315-261, appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for the exclusion stated. The waste analysis shall rely on appropriate analytical techniques.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system, type/feed.
(E) Capacity of prime mover.
(F) Description of automatic waste feed cut-off system(s).
(G) Stack gas monitoring and pollution control equipment.
(H) Nozzle and burner design.
(I) Construction materials.
(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under Subsection R315-270-62(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of Subsection R315-270-62(b)(2) and the criteria in Subsection R315-270-62(b)(5).

(3) The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of Subsection R315-270-62(b)(2).

(4) Based on the waste analysis data in the trial burn plan, the Director shall specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs shall be specified by the Director based on The Director's estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Sections R315-261-30 through 35, the hazardous waste organic constituent or constituents identified in appendix VII of Rule R315-261 as the basis for listing.

(5) The Director shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by Section R315-264-343 can be met;

(ii) The trial burn itself shall not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under Section R315-264-345; and

(iv) The information sought in Subsection R315-270-62(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Director shall send a notice to all persons on the facility mailing list as set forth in Subsection R315-124-10(c)(1)(ix) and to the appropriate units of State and local government as set forth in Subsection R315-124-10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any; ash residues; and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Subsection R315-264-343(a).

(v) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour, 4 pounds per hour, a computation of HCl removal efficiency in accordance with Subsection R315-264-343(b).

(vi) A computation of particulate emissions, in accordance with Subsection R315-264-343(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in Section R315-264-343 and to establish the operating conditions required by Section R315-264-345 as necessary to meet that performance standard.

(8) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in Subsection R315-270-62(b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(9) All data collected during any trial burn shall be submitted to the Director following the completion of the trial burn.

(10) All submissions required by Subsection R315-270-62(b) shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section R315-270-11.

(11) Based on the results of the trial burn, the Director shall set the operating requirements in the final permit according to Section R315-264-345. The permit modification shall proceed according to Section R315-270-42.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Director may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of Section R315-264-345, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the

applicant, and modification of the facility permit by the Director.

(1) Applicants shall submit a statement, with part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of Section R315-264-343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in Section R315-264-345.

(2) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section R315-264-34 based on his engineering judgment.

(d) For the purpose of determining feasibility of compliance with the performance standards of Section R315-264-343 and of determining adequate operating conditions under Section R315-264-345, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with Subsection R315-270-19(b) and Subsections R315-270-62(b)(2) through (b)(5) and (b)(7) through (b)(10) or, instead, submit other information as specified in Subsection R315-270-19(c). The Director shall announce the Director's intention to approve the trial burn plan in accordance with the timing and distribution requirements of Subsection R315-270-62(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under Subsection R315-270-19(a) are exempt from compliance with Sections R315-264-343 and 345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in Subsection R315-270-62(b)(7), with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director shall specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

R315-270-63. Hazardous Waste Permit Program -- Permits for Land Treatment Demonstrations Using Field Test or Laboratory Analyses.

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section R315-264-272, the Director may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in Subsection R315-264-272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Director may issue a two-phase facility permit if the Director finds that, based on information submitted in part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Director finds that not enough information exists upon which the Director can establish permit conditions to attempt to provide for compliance with all of the requirements of Sections R315-264-270 through 283, he shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Director finds that a phased permit may be issued, the Director shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone; monitoring procedures; post-demonstration clean-up activities; and any other conditions which the Director finds may be necessary under Subsection R315-264-272(c). The Director shall include conditions in the second phase of the facility permit to attempt to meet all Sections R315-264-270 through 283 requirements pertaining to unit design, construction, operation, and maintenance. The Director shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the part B application.

(1) The first phase of the permit shall be effective as provided in Subsection R315-124-15(b).

(2) The second phase of the permit shall be effective as provided in Subsection R315-270-63(d).

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator shall submit to the Director a certification, signed by a person authorized to sign a permit application or report under Section R315-270-11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Director approves a later date.

(d) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of Section R315-264-272, the Director shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Sections R315-264-270 through 283, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under Section R315-270-42, or otherwise shall proceed as a modification under Subsection R315-270-41(a)(2). If such modifications are necessary, the second phase of the permit shall become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Director shall give notice of the final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in Subsection R315-124-15(b).

R315-270-65. Hazardous Waste Permit Program -- Research, Development, and Demonstration Permits.

(a) The Director may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Rules R315-264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as

necessary, and for operation of the facility for not longer than one year unless renewed as provided in Subsection R315-270-64(d), and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Director deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the Director deems necessary to protect human health and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director deems necessary regarding testing and providing of information to the Director with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under Section R315-270-65, the Director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Rules R315-124 and 270 except that there may be no modification or waiver of regulations regarding financial responsibility, including insurance, or of procedures regarding public participation.

(c) The Director may order an immediate termination of all operations at the facility at any time the Director determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under Section R315-270-65 may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

R315-270-66. Hazardous Waste Permit Program -- Permits for Boilers and Industrial Furnaces Burning Hazardous Waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to the hazardous waste permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in Subsection R307-214-2(39), i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) which are incorporated by reference in R307-214-2(39) documenting compliance with all applicable requirements of Subsection R307-214-2(39), the requirements of Section R315-270-66 do not apply. The requirements of Section R315-270-66 do apply, however, if the Director determines certain provisions are necessary to ensure compliance with Subsections R315-266-102(e)(1) and 102(e)(2)(iii) if owners and operators elect to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the Sections R315-266-105, 106, and 107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), 10(l), 32(b)(2), and 32(b)(3).

(a) General. Owners and operators of new boilers and industrial furnaces, those not operating under the interim status standards of Section R315-266-103, are subject to Subsections R315-270-66(b) through (f). Boilers and industrial furnaces operating under the interim status standards of Section R315-266-103 are subject to Subsection R315-270-66(g).

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Director shall establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section R315-270-42.

(i) Applicants shall submit a statement, with part B of the permit application that suggests the conditions necessary to operate in compliance with the standards of Sections R315-266-104 through 107 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in Subsection R315-266-102(e).

(ii) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections R315-266-104 through 107.

(2) Trial burn period. For the duration of the trial burn, the Director shall establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of Sections R315-266-104 through 107 and determining adequate operating conditions under Subsection R315-266-102(e). Applicants shall propose a trial burn plan, prepared under Subsection R315-270-66(c), to be submitted with part B of the permit application.

(3) Post-trial burn period.

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Director to reflect the trial burn results, the Director shall establish the operating requirements most likely to ensure compliance with the performance standards of Sections R315-266-104 through 107.

(ii) Applicants shall submit a statement, with part B of the application that identifies the conditions necessary to operate during this period in compliance with the performance standards of Sections R315-266-104 through 107. This statement should include, at a minimum, restrictions on the operating requirements provided by Subsection R315-266-102(e).

(iii) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections R315-266-104 through 107.

(4) Final permit period. For the final period of operation, the Director shall develop operating requirements in conformance with Subsection R315-266-102(e) that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of Sections R315-266-104 through 107. Based on the trial burn results, the Director shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to Section R315-270-42.

(c) Requirements for trial burn plans. The trial burn plan shall include the following information. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to

supplement this information, if necessary, to achieve the purposes of Subsections R315-270-66(c)(1) through (9):

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in appendix VIII, of Rule R315-261, that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for this exclusion explained. The waste analysis shall be conducted in accordance with appropriate analytical techniques.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(i) Manufacturer's name and model number of the boiler or industrial furnace;

(ii) Type of boiler or industrial furnace;

(iii) Maximum design capacity in appropriate units;

(iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) Capacity of hazardous waste feed system;

(vi) Description of automatic hazardous waste feed cutoff system(s);

(vii) Description of any air pollution control system; and

(viii) Description of stack gas monitoring and any pollution control monitoring systems.

(4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Director's decision under Subsection R315-270-66(b)(2).

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in Sections R315-266-104 through 107.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of Section R315-270-66(c) and the criteria in Subsection R315-270-66(b)(2).

(d) Trial burn procedures.

(1) A trial burn shall be conducted to demonstrate conformance with the standards of Sections R315-266-104 through 107 under an approved trial burn plan.

(2) The Director shall approve a trial burn plan if the Director finds that:

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of Sections R315-266-104 through 107;

(ii) The trial burn itself shall not present an imminent hazard to human health and the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under Subsection R315-266-102(e); and

(iv) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The Director shall send a notice to all persons on the facility mailing list as set forth in Subsection R315-124-10(c)(1)(ix) and to the appropriate units of State and local government as set forth in Subsection R315-124-10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Director.

(ii) This notice shall contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(4) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in Subsection R315-270-66(c). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(5) All data collected during any trial burn shall be submitted to the Director following completion of the trial burn.

(6) All submissions required by Subsection R315-270-66(d) shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section R315-270-11.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under Subsection R315-266-104(a), the Director shall specify, based on the hazardous waste analysis data and other information in the trial burn plan, as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs shall be specified by the Director based on information including the Director's estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Sections R315-261-30 through 35, the hazardous waste organic constituent(s) identified in Appendix VII of Rule R315-261 as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams; hazardous waste, other fuels, and industrial furnace feedstocks;

(2) When a DRE trial burn is required under Subsection R315-266-104(a):

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Subsection R315-266-104(a);

(3) When a trial burn for chlorinated dioxins and furans is required under Subsection R315-266-104(e), a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, or HCl/Cl2 is required under Section R315-266-105, or Subsections R315-266-106(c) or (d), or SubsectionsR315-266-107(b)(2) or (c), a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl2), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or HCl/Cl2 is required under Subsections R315-266-104(a), 106(c) or (d), or 107(b)(2) or (c), a quantitative analysis of the scrubber water, if any); ash residues; other residues; and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Director may specify as necessary to ensure that the trial burn shall determine compliance with the performance standards in Sections R315-266-104 through 107 and to establish the operating conditions required by Subsection R315-266-102(e) as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of Sections R315-266-104 through 107 and of determining adequate operating conditions under Section R315-266-103, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of Section R315-266-103 shall either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of Section R315-270-66 or submit other information as specified in Subsection R315-270-22(a)(6). The Director shall announce the Director's intention to approve of the trial burn plan in accordance with the timing and distribution requirements of Subsection R315-270-66(d)(3). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for Director approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application shall complete the trial burn and submit the results specified in Subsection R315-270-66(f) with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn shall be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

R315-270-68. Hazardous Waste Permit Program -- Remedial Action Plans (RAPs).

Remedial Action Plans (RAPs) are special forms of permits that are regulated under Sections R315-270-79 through 230.

R315-270-70. Hazardous Waste Permit Program -- Qualifying for Interim Status.

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State or Federal Act that render the facility subject to the requirement to have a hazardous waste permit shall have interim status and shall be treated as having been issued a permit to the extent the owner or operator has:

(1) Complied with the requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity or the notification requirements of Rules R315-260 through 266, 268 and 270.

Comment: Some existing facilities may not be required to file a notification under section 3010(a) of RCRA. These facilities may qualify for interim status by meeting Subsection R315-270-70(a)(2).

(2) Complied with the requirements of Section R315-270-10 governing submission of part A applications;

(b) Failure to qualify for interim status. If the Director has reason to believe upon examination of a part A application that it fails to meet the requirements of Section R315-270-13, the Director shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the Director's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in the owner or operator's part A application. If, after such notification and opportunity for response, the Director determines that the application is deficient the Director may take appropriate enforcement action.

(c) Subsection R315-270-70(a) shall not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under Federal or State authority has been previously terminated.

R315-270-71. Hazardous Waste Permit Program -- Operation During Interim Status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in part A of the permit application;

(2) Employ processes not specified in part A of the permit application; or

(3) Exceed the design capacities specified in part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at Rule R315-265.

R315-270-72. Hazardous Waste Permit Program -- Changes During Interim Status.

(a) Except as provided in Subsection R315-270-72(b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in part A of the permit application and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification if the owner or operator submits a revised part A

permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised part A permit application prior to such a change, along with a justification explaining the need for the change, and the Director approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised part A permit application prior to such change, along with a justification explaining the need for the change, and the Director approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of Sections R315-265-140 through 150, until the new owner or operator has demonstrated to the Director that the owner or operator is complying with the requirements of Sections R315-265-140 through 150. The new owner or operator shall demonstrate compliance with Sections R315-265-140 through 150 within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Sections R315-265-140 through 150, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Sections R315-265-140 through 150 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued under Subsection 19-6-105(d) or by EPA under section 3008(h) or other Federal authority, or by a court in a judicial action brought by EPA or by an authorized State. Changes under Subsection R315-270-72(a)(5) are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under Subsection R315-270-72(b), changes listed under Subsection R315-270-72(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of Section R315-265-193 for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o).

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued under Subsection 19-6-105(d), or by EPA under section 3008(h) or other Federal authority, or by a court in a judicial proceeding brought by EPA or an authorized State, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Rule R315-268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Rule R315-268 or RCRA section 3004.

(7) Addition of newly regulated units under Subsection R315-27-72(a)(6).

(8) Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors, which is incorporated by reference in Subsection R307-214-2(39).

R315-270-73. Hazardous Waste Permit Program -- Termination of Interim Status.

Interim status terminates when:

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under Sections R315-270-79 through 230 is made.

(b) Interim status is terminated as provided in Subsection R315-270-10(e)(5).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a part B application for a permit for such facility prior to that date; and

(2) The owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Federal Act, or Section 19-6-108, that render the facility subject to the requirement to have a hazardous waste permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a part B application for a hazardous waste permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under Subsections R315-270-72(a) (1), (2) or (3), on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(f) For owners and operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for an incinerator facility by

November 8, 1986.

(g) For owners or operators of any facility, other than a land disposal or an incinerator facility, which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for the facility by November 8, 1988.

R315-270-79. Hazardous Waste Permit Program -- Why Sections R315-79 through 230 Written In A Special Format?

Sections R315-270-79 through 230 are written in a special format to make it easier to understand the regulatory requirements. Like other rules adopted the Board, this establishes enforceable legal requirements. For Sections R315-270-79 through 230, "I" and "you" refer to the owner/operator.

R315-270-80. Hazardous Waste Permit Program -- What is a RAP?

(a) A RAP is a special form of hazardous waste permit that you, as an owner or operator, may obtain, instead of a permit issued under Sections R315-270-3 through 66, to authorize you to treat, store, or dispose of hazardous remediation waste, as defined in Section R315-260-10, at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under Section R315-270-230.

(b) The requirements in Sections R315-270-3 through 66 do not apply to RAPs unless those requirements for traditional permits are specifically required under Sections R315-270-80 through 230. The definitions in Section R315-270-2 apply to RAPs.

(c) Notwithstanding any other provision of Rule R315-270 or Rule R315-124, any document that meets the requirements in Section R315-270-80 constitutes a hazardous waste permit Section 19-6-108.

(d) A RAP may be:

(1) A stand-alone document that includes only the information and conditions required by Sections R315-270-79 through 230; or

(2) Part, or parts, of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by Sections R315-270-79 through 230.

(e) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

R315-270-85. Hazardous Waste Permit Program -- When Do I Need a Rap?

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a permit under Section R315-270-1, you shall either obtain:

(1) A permit according to Sections R315-270-3 through 66; or

(2) A RAP according to Sections R315-270-79 through 230.

(b) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under Sections R315-270-79 through 230.

(c) You may obtain a RAP for managing hazardous remediation waste at an already permitted hazardous waste facility. You shall have these RAPs approved as a modification to your existing permit according to the requirements of Section R315-270-41 or 42 instead of the requirements in Sections R315-270-79 through 230. When you submit an application for such a modification, however, the information requirements in Subsections R315-270-42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you shall submit the information required under Section R315-270-110. When your permit is modified the RAP becomes part of the hazardous waste permit. Therefore when your permit, including the RAP portion, is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in Sections R315-270-40 through 42, revoked and reissued according to the applicable requirements in Sections R315-270-41 and 43, terminated according to the applicable requirements in Section R315-270-43, and expire according to the applicable requirements in Sections R315-270-50 and 51.

R315-270-90. Hazardous Waste Permit Program -- Does My Rap Grant Me Any Rights or Relieve Me of Any Obligations?

The provisions of Section R315-270-4 apply to RAPs. Note: The provisions of Subsection R315-270-4(a) provide you assurance that, as long as you comply with your RAP, the Director shall consider you in compliance with the rules adopted under Sections 19-6-101 through 125, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in Section R315-270-4.

R315-270-95. Hazardous Waste Permit Program -- How Do I Apply for a Rap?

To apply for a RAP, you shall complete an application, sign it, and submit it to the Director according to the requirements in Sections R315-270-79 through 230.

R315-270-100. Hazardous Waste Permit Program -- Who Shall Obtain a Rap?

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner shall also sign the RAP application.

R315-270-105. Hazardous Waste Permit Program -- Who Shall Sign the Application and Any Required Reports for a Rap?

Both the owner and the operator shall sign the RAP application and any required reports according to Subsections R315-270-11(a), (b), and (c). In the application, both the owner and the operator shall also make the certification required under Subsection R315-270-11(d)(1). However, the owner may choose the alternative certification under Subsection R315-270-11(d)(2) if the operator certifies under Subsection R315-270-11(d)(1).

R315-270-110. Hazardous Waste Permit Program -- What Shall I Include in My Application for a Rap?

You shall include the following information in your application for a RAP:

(a) The name, address, and EPA identification number of the remediation waste management site;

(b) The name, address, and telephone number of the owner and operator;

(c) The latitude and longitude of the site;

(d) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;

(e) A scaled drawing of the remediation waste management site showing:

(1) The remediation waste management site boundaries;

(2) Any significant physical structures; and

(3) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;

(f) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This shall include information on:

(1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;

(2) An estimate of the quantity of these wastes; and

(3) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of Rule R315-268, as applicable;

(g) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of Rules R315-264, 266, and 268;

(h) Such information as may be necessary to enable the Director to carry out his duties as is required for permits under Subsection R315-270-14(b)(20);

(i) Any other information the Director decides is necessary for demonstrating compliance with Sections R315-270-79 through 230 or for determining any additional RAP conditions that are necessary to protect human health and the environment.

R315-270-115. Hazardous Waste Permit Program -- What If I Want to Keep This Information Confidential?

Sections 63G-2-101 through 901 allows you to claim as confidential any or all of the information you submit to the Director under Sections R315-270-79 through 230. You shall assert any such claim by following the requirements of Section 63G-2-309. If you do assert a claim at the time you submit the information, the Director shall treat the information according to the procedures in Sections 63G-2-101 through 901. If you do not assert a claim at the time you submit the information, the Director may make the information available to the public without further notice to you. The Director shall deny any requests for confidentiality of your name and/or address.

R315-270-120. Hazardous Waste Permit Program -- To Whom Shall I Submit My Rap Application?

You shall submit your application for a RAP to the Director for approval.

R315-270-125. Hazardous Waste Permit Program -- If I Submit My Rap Application as Part of Another Document, What Shall I Do?

If you submit your application for a RAP as a part of another document, you shall clearly identify the components of that document that constitute your RAP application.

R315-270-130. Hazardous Waste Permit Program -- What Is the Process for Approving or Denying My Application for a Rap?

(a) If the Director tentatively finds that your RAP application includes all of the information required by Section R315-270-110 and that your proposed remediation waste management activities meet the regulatory standards, the Director shall make a tentative decision to approve your RAP application. The Director shall then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to Sections R315-270-79 through 230.

(b) If the Director tentatively finds that your RAP application does not include all of the information required by Section R315-270-110 or that your proposed remediation waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Director requests, or to correct any deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director shall prepare a notice of intent to deny your RAP application and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in Sections R315-270-79 through 230. The Director may deny the RAP application either in its entirety or in part.

R315-270-135. Hazardous Waste Permit Program -- What Shall the Director Include in a Draft Rap?

If the Director prepares a draft RAP, it shall include the:

(a) Information required under Subsections R315-270-110(a) through (f);

(b) The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of Rules R315-264, 266, and 268, including any recordkeeping and reporting requirements. In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of Rules R315-264, 266, and 268 into the RAP or establish site-specific conditions as required or allowed by Rules R315-264, 266, and 268;

(2) Terms and conditions in Section R315-270-30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in Section R315-270-170; and

(4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(c) If the draft RAP is part of another document, as described in Subsection R315-270-80(d)(2), the Director shall clearly identify the components of that document that constitute the draft RAP.

R315-270-140. Hazardous Waste Permit Program -- What Else Shall the Director Prepare in Addition to the Draft Rap or Notice of Intent to Deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he shall then:

(a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

(b) Compile an administrative record, including:

(1) The RAP application, and any supporting data furnished by the applicant;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all documents cited therein, material readily available at the Division's office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis; and

(4) Any other documents that support the decision to approve or deny the RAP; and

(c) Make information contained in the administrative record available for review by the public upon request.

R315-270-145. Hazardous Waste Permit Program -- What Are the Procedures for Public Comment on the Draft Rap or Notice of Intent to Deny?

(a) The Director shall:

(1) Send notice to you of intent to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of intent to approve or deny your RAP application in a major local newspaper of general circulation;

(3) Broadcast intent to approve or deny your RAP application over a local radio station; and

(4) Send a notice of intent to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

(b) The notice required by Subsection R315-270-145(a) shall provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(c) The notice required by Subsection R315-270-145(a) shall include:

(1) The name and address of the office processing the RAP application;

(2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(3) A brief description of the activity the RAP will regulate;

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(5) A brief description of the comment procedures, and any other procedures by which the public may participate in the RAP decision;

(6) If a hearing is scheduled, the date, time, location and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record, and times when it will be open for public inspection; and

(9) Any additional information the Director considers necessary or proper.

(d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director shall hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The hearing shall include an opportunity for any person to present written or oral comments. Whenever possible, the Director shall schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in Subsection R315-270-145(a). This notice shall, at a minimum, include the information required by Subsection R315-270-145(c) and:

(1) Reference to the date of any previous public notices relating to the RAP application;

(2) The date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

R315-270-150. Hazardous Waste Permit Program -- How Will the Director Make a Final Decision on My Rap Application?

(a) The Director shall consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

(b) If the Director determines that your RAP includes the information and terms and conditions required in Section R315-270-135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Director determines that your RAP does not include the information required in Section R315-270-135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in Sections R315-270-79 through 230.

(e) When the Director issues a final RAP decision, the Director shall refer to the procedures for appealing the decision under Section R315-270-155.

(f) Before issuing the final RAP decision, the Director shall compile an administrative record. Material readily available at the Division office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP shall include information in the administrative record for the draft RAP, see Subsection R315-270-140(b), and:

(1) All comments received during the public comment period;

(2) Tapes or transcripts of any hearings;

(3) Any written materials submitted at these hearings;

(4) The responses to comments;

(5) Any new material placed in the record since the draft RAP was issued;

(6) Any other documents supporting the RAP; and

(7) A copy of the final RAP.

(g) The Director shall make information contained in the administrative record available for review by the public upon request.

R315-270-155. Hazardous Waste Permit Program -- May the Decision to Approve or Deny My Rap Application Be Administratively Appealed?

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application under Section R315-124-19. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under Section R315-124-15 (or a decision under Section R315-270-29 to deny a permit for the active life of a hazardous waste management facility or unit).

(b) This appeal is a prerequisite to seeking judicial review of these actions.

R315-270-160. Hazardous Waste Permit Program -- When Does My Rap Become Effective?

Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:

(a) The Director specifies a later effective date in his decision;

(b) You or another person has appealed your RAP under R315-270-155 (if your RAP is appealed, and the request for review is granted under Section R315-270-155, conditions of your RAP are stayed according to Section R315-124-16 of this chapter); or

(c) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it

is issued.

R315-270-165. Hazardous Waste Permit Program -- When May I Begin Physical Construction of New Units Permitted Under the Rap?

You shall not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

R315-270-170. Hazardous Waste Permit Program -- After My Rap Is Issued, How May it Be Modified, Revoked and Reissued, or Terminated?

In your RAP, the Director shall specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures shall provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional hazardous waste permit, as allowed under Subsection R315-270-85(c), then the RAP will be modified according to the applicable requirements in Sections R315-270-40 through 42, revoked and reissued according to the applicable requirements in Sections R315-270-41 and 43, or terminated according to the applicable requirements of Section R315-270-43.

R315-270-175. Hazardous Waste Permit Program -- for What Reasons May the Director Choose to Modify My Final Rap?

(a) The Director may modify your final RAP on his own initiative only if one or more of the following reasons listed in Section R315-27-175 exist(s). If one or more of these reasons do not exist, then the Director shall not modify your final RAP, except at your request. Reasons for modification are:

(1) You made material and substantial alterations or additions to the activity that justify applying different conditions;

(2) The Director finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(3) The standards or regulations on which the RAP was based have changed because of new or amended statutes, rules, or by judicial decision after the RAP was issued;

(4) If your RAP includes any schedules of compliance, the Director may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

(5) You are not in compliance with conditions of your RAP;

(6) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(7) The Director has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(8) You have notified the Director, as required in the RAP under Subsection R315-270-30(l)(3)) of a proposed transfer of a RAP.

(b) Notwithstanding any other provision in Section R315-270-175, when the Director reviews a RAP for a land disposal facility under Section R315-270-195, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Rules R315-124, 260 through 266 and 270.

(c) The Director shall not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

R315-270-180. Hazardous Waste Permit Program -- for What Reasons May the Director Choose to Revoke and Reissue My Final Rap?

(a) The Director may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Director shall not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in Subsections R315-270-175(a)(5) through (8) if the Director determines that revocation and reissuance of your RAP is appropriate.

(b) The Director shall not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

R315-270-185. Hazardous Waste Permit Program -- for What Reasons May the Director Choose to Terminate My Final Rap, or Deny My Renewal Application?

The Director may terminate your final RAP on his own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in Subsections R315-270-175(a)(5) through (7) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

R315-270-190. Hazardous Waste Permit Program -- May the Decision to Approve or Deny a Modification, Revocation and Reissuance, or Termination of My Rap Be Administratively Appealed?

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to Section R315-270-155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to deny a request for modification, revocation and reissuance, or termination. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is found in Rule R305-7

R315-270-195. Hazardous Waste Permit Program -- When Will My RAP Expire?

RAPs shall be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, the Director shall review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Director shall follow the requirements for modifying your RAP as necessary to assure that you continue to

comply with currently applicable requirements in Rules adopted under Section 19-6-101 through 125.

R315-270-200. Hazardous Waste Permit Program -- How May I Renew My RAP if it Is Expiring?

If you wish to renew your expiring RAP, you shall follow the process for application for and issuance of RAPs in Sections R315-270-79 through 230.

R315-270-205. Hazardous Waste Permit Program -- What Happens If I Have Applied Correctly for a Rap Renewal But Have Not Received Approval by the Time My Old Rap Expires?

If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

R315-270-210. Hazardous Waste Permit Program -- What Records Shall I Maintain Concerning My Rap?

You are required to keep records of:

(a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and

(b) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

R315-270-215. Hazardous Waste Permit Program -- How Are Time Periods in the Requirements in Sections R315-27-79 through 230 and My Rap Computed?

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event. For example, if your RAP specifies that you shall close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event. For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator shall submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator shall submit the revised RAP application no later than October 3, so that the 90th day would be December 31.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day. For example, if you wish to appeal the Director's decision to modify your RAP, then you shall file the appeal within 30 days after the Director has issued the final RAP decision. If the 30th day falls on Sunday, then you may submit your appeal by the Monday after. If the 30th day falls on July 4th, then you may submit your appeal by July 5th.

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him by mail, 3 days shall be added to the prescribed term. For example, if you wish to appeal the Director's decision to modify your RAP, then you shall file the appeal within 30 days after the Director has issued the final RAP decision. However, if the Director notifies you of his decision by mail, then you may have 33 days to file.

R315-270-220. Hazardous Waste Permit Program -- How May I Transfer My Rap to a New Owner or Operator?

(a) If you wish to transfer your RAP to a new owner or operator, you shall follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute "significant" modifications for purposes of Section R315-270-170. The new owner/operator shall submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator shall comply with the applicable requirements in Section R315-264-140 through 151 until the new owner or operator has demonstrated that he is complying with the requirements in Section R315-264-140 through 151. The new owner or operator shall demonstrate compliance with Section R315-264-140 through 151 within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with Section R315-264-140 through 151 to the Director, the Director shall notify you that you no longer need to comply with Section R315-264-140 through 151 as of the date of demonstration.

R315-270-230. Hazardous Waste Permit Program -- May I Perform Remediation Waste Management Activities Under a Rap at a Location Removed From the Area Where the Remediation Wastes Originated?

(a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(b) If the Director determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.

(c) You shall request the RAP, and the Director shall approve or deny the RAP, according to the procedures and requirements in Sections R315-270-79 through 230.

(d) A RAP for an alternative location shall also meet the following requirements, which the Director shall include in the RAP for such locations:

(1) The RAP for the alternative location shall be issued to the person responsible for the cleanup from which the remediation wastes originated;

(2) The RAP is subject to the expanded public participation requirements in Sections R315-124-31, 32, and 33;

(3) The RAP is subject to the public notice requirements in Subsection R315-124-10(c);

(4) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time, you shall demonstrate compliance with this standard through the requirements in Subsection R315-270-14(b)(11), See definitions of terms in Subsection R315-264-18(a);

(e) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(1) Exclusion from facility-wide corrective action under Section R315-264-101; and

(2) Application of Subsection R315-264-1(j) in lieu of Sections R315-264-10 through 56.

R315-270-235. Hazardous Waste Permit Program -- Integration with Maximum Achievable Control Technology (MACT) Standards -- Options For Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production

Furnaces to Minimize Emissions From Startup, Shutdown, and Malfunction Events.

(a) Facilities with existing permits

(1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a hazardous waste-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to Subsections R315-264-340(b) and R315-266-100(b):

(i) Retain relevant permit conditions. Under this option, the Director shall:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) Revise relevant permit conditions.

(A) Under this option, the Director shall:

(I) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(II) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(I) You shall notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You shall notify the Director of such changes within five days of making such changes. You shall identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(II) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(IIi) Upon permit renewal, or, if warranted;

(IIii) By modifying the permit under Subsection R315-270-41(a) or Section R315-270-42.

(iii) Remove permit conditions. Under this option:

(A) The owner or operator shall document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39); and

(B) The Director shall remove permit conditions that are no longer applicable according to Subsections R315-264-340(b) and R315-266-100(b).

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Director of the Division of Air Quality a Notification of Compliance documenting compliance with the standards of Subsection R315-214-2(39), which adopts 40 CDR 63 subpart EEE by reference, may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Director shall:

(I) Include, in the permit, conditions that ensure compliance with Subsections R315-264-345(a) and 345(c) or Subsections R315-266-102(e)(1) and 102(e)(2)(iii) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(II) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan; or

(ii) RCRA option B.

(A) Under this option, the Director shall:

(I) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(II) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(I) You shall notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You shall notify the Director of such changes within five days of making such changes. You shall identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(II) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(IIi) Upon permit renewal, or, if warranted;

(IIii) By modifying the permit under Subsection R315-270-41(a) or Section R315-270-42; or

(iii) CAA option. Under this option:

(A) The owner or operator shall document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39); and

(B) The Director shall omit from the permit conditions that are not applicable under Subsections R315-264-340(b) and R315-266-100(b).

(b) Interim status facilities

(1) Interim status operations. In compliance with Section R315-265-340 and Subsection R315-266-100(b), the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Rule R315-265 or 266 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Director

of the Division of Air Quality a Notification of Compliance documenting compliance with the standards of Subsection R307-214-2(39), which adopts 40 CFR 63 subpart EEE by reference.

(i) RCRA option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of Rules R315-265 or 266 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) CAA option. Under this option, the owner or operator is exempt from the interim status standards of Rules R315-265 or 266 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Director that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39).

(2) Operations under a subsequent RCRA permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Rules R315-265 or 266 submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by Subsection R315-270-235(a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

(c) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to hazardous waste permit requirements after October 12, 2005 shall control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) Comply with the requirements specified in 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39); or

(2) Request to include in the hazardous waste permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The Director shall specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

KEY: hazardous waste
April 15, 2016 **19-6-105**
19-6-106

R392. Health, Disease Control and Prevention, Environmental Services.
R392-400. Temporary Mass Gatherings Sanitation.
R392-400-1. Authority.

This rule is authorized under Utah Code Sections 26-15-2, 26-1-5 and 26-1-30.

R392-400-2. Purpose.

It is the purpose of this rule:

(1) to protect, preserve and promote the health and safety of the public;

(2) to prevent and control the incidence of communicable diseases;

(3) to reduce hazards to health and environment;

(4) to maintain adequate sanitation and public health; and

(5) to promote the general welfare of the public.

R392-400-3. Definitions.

(1) "Department" means the Utah Department of Health (UDOH).

(2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.

(3) "Drinking Water Station" means a location where a person may obtain safe drinking water free of charge.

(4) "Emergency Medical Provider" means the same as Emergency Medical Services Provider as defined in 26-8a-102.

(5) "First Aid Station" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.

(6) "Health Officer" means the director of the local health department having jurisdiction or the health officer's designee.

(7) "Operator" means a person who represents a group, corporation, partnership, governing body, association, or other public or private organization legally responsible for obtaining the necessary permits for the overall operation of a temporary mass gathering.

(8) "Owner" means any person who alone, jointly, or severally with others:

(a) has legal title to any premises, with or without accompanying actual possession thereof or;

(b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.

(9) "Permit" means a written form of authorization written in accordance with this rule.

(10) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.

(11) "Safe Drinking Water" means potable water meeting State safe drinking water rules or bottled water as regulated by the Utah Department of Agriculture and Food.

(12) "Solid Waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for the purpose of discarding, materials that have served their original intended purpose.

(13) "Staff' means any person who:

(a) works for or provides services for or on behalf of the operator or a vendor, or

(b) is a vendor at a gathering.

(14) "Temporary Mass Gathering" or "Gathering" means an actual or reasonably anticipated assembly of 1000 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site or sites for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded.

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means used water or water carried wastes.

R392-400-4. Permit To Operate Required.

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the health officer.

(2) The health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed 16 consecutive days unless otherwise approved by the health officer.

(4) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.

R392-400-5. Gathering Operator Required On Site.

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering at all times during operating hours.

R392-400-6. Permit Application Required.

(1) The health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days prior to the first advertisement of the gathering and at least 30 days prior to the first day of the gathering. The health officer may grant an exception to this requirement on a case by case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be submitted to the health officer and include the following information:

(a) name, address, telephone number, email and fax number (if applicable) of the operator;

(b) number of people expected to attend the gathering;

(c) a description of the type of gathering to be held with the date(s) and times the gathering will be held;

(d) estimated length of stay of attendees;

(e) name, address, telephone number, email and fax number (if applicable) of property owner;

(f) location of the gathering and a site plan delineating the area where the gathering is to be held including the following:

(i) the parking area available for patrons;

(ii) location of entrance, exit, and interior roadways and walks;

(iii) location, type, and provider of restroom facilities;

(iv) location and description of water stations;

(v) location and number of food stands, and the types of food to be served if known;

(vi) location, number, type, and provider of solid waste containers;

(vii) location of operator's headquarters at the gathering;

(viii) a plan to provide lighting adequate to ensure the safety of attendees and staff;

(ix) location of all parking areas designated for the gathering and under the operator's control.

(x) location of all first aid stations and emergency medical resources.

(g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;

(h) a site clean up plan after the gathering;

(i) total number, and qualifications of first aid station

personnel;

(j) plan for directional and exit signs;

(k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;

(l) plans to address hazardous conditions as required in Section R392-400-12;

(m) information and plans on any artificially constructed structure or modified natural structure intended for recreational or therapeutic purposes where the public may be exposed to water via contact, ingestion, or aerosolization.

(n) emergency medical services operational plan and the contact information of the emergency medical provider;

(o) any other information specifically requested by the health officer as necessary to protect public health.

R392-400-7. Inspections.

(1) The health officer may conduct inspections before, during, and after a gathering to ensure compliance with R392-400 and approved plans.

(2) The operator shall provide the health officer with access to all areas of the gathering that the health officer deem necessary and the number of access credentials they request.

(3) The operator shall effectively communicate the health officer's access privileges to staff.

R392-400-8. Notice Of Violation Or Closing.

(1) The health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.

(2) The health officer shall, in accordance with R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.

(3) The health officer may issue a notice of closure of the gathering or part thereof to the owner, operator or the operator's designee if the health officer determines that conditions at the gathering constitute a serious or imminent health hazard.

(4) No gathering site or part thereof that has been closed may be used for a gathering until the health officer determines that the conditions causing the closure have been abated and written approval is received from the health officer. The health officer shall remove the posted notice whenever the violation(s) upon which closing, and posting were based has been remedied.

(5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the health officer.

(6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or the Utah Administrative Procedures Act, whichever is applicable.

R392-400-9. Solid Waste Management.

(1) The operator shall contract with a solid waste hauler approved by the health officer.

(2) The operator shall provide and strategically locate a sufficient number of covered waste containers approved by the health officer to effectively accommodate the solid waste generated at the gathering.

(a) The operator shall provide waste containers next to the hand wash stations.

(3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.

(4) The operator shall ensure that solid waste is cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. The health officer may allow for more than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the health officer is satisfied that the extension will not adversely affect public health

(5) The operator shall ensure that solid waste is prevented from being blown from the gathering site onto adjacent properties.

(6) The operator shall ensure that all solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting State and local solid waste disposal facility requirements.

(7) The operator, staff, participants, and spectators shall comply with all applicable State and local requirements for solid waste management.

R392-400-10. Site Maintenance.

(1) All buildings, structures and overnight parking provided for the gathering shall be maintained safe, clean, in good repair, and shall comply with all applicable laws.

(3) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or restroom facilities prior to, during, and immediately following a gathering.

(4) The operator is responsible for the maintenance and sanitation of the gathering site and facilities. The operator shall take steps to prevent and abate any nuisance or insanitary condition which may develop.

(5) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.

(6) Sufficient signs shall identify and show the location of first aid, restroom and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.

(7) The operator shall provide lighting adequate to ensure the safety of attendees.

(8) All parking areas used for the gathering and under the control of the gathering operator must meet the requirements of this rule.

R392-400-11. Emergency Medical Care Requirements.

(1) The operator shall ensure that the gathering has at least one first aid station. Emergency medical care and necessary supplies and equipment shall be provided as determined by the emergency medical provider and the emergency medical operations plan. The health officer or emergency medical provider may require more than one first aid station.

(2) First aid stations shall afford privacy to a person receiving care or treatment.

(3) First aid stations shall be of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons.

(4) First aid stations shall be strategically located to provide expedient medical care for those attending or participating in the gathering.

(5) First aid stations shall be easily accessible by emergency vehicles. The operator shall provide the emergency medical provider a map of the gathering site which includes location of first aid stations, emergency vehicle ingress and egress routes, landing zones (if applicable) and rendezvous locations.

(6) A first aid station shall be clearly marked and identifiable as a first aid station.

(7) The health officer or emergency medical provider may require additional emergency medical services personnel as deemed necessary.

(8) The operator shall ensure that all medical staff have access to telephones or radios to contact outside emergency medical services.

(9) The local health officer or emergency medical provider may require the operator to provide dedicated stand-by ambulances and personnel at the gathering.

(10) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.

R392-400-12. Hazardous Conditions.

The operator shall develop contingency plans for dangerous conditions which may occur during the gathering. The plans may include evacuation, cancellation or delay of the gathering and provision for support facilities.

R392-400-13. Food Protection.

(1) The operator and vendors shall comply with R392-100 Food Service Sanitation.

(2) The operator shall assure that food vendors obtain required food service operating permits from the health officer.

R392-400-14. Safe Drinking Water Supply Requirements.

(1) The operator shall ensure that all drinking water is from a state-approved drinking water system or commercially bottled water meeting 21 CFR 129 (April 1, 2015) and 21 CFR 165.110 (April 1, 2015) from a company registered with the U.S. Food and Drug Administration and the Utah Department of Agriculture and Food.

(2) Drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the health officer.

(3) The operator shall provide water free of charge and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff.

(4) At least four drinking water stations are required. An additional drinking water station is required for each additional 500 attendees above 1000 persons. The health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional 500 attendees above 1000 persons because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator must provide single use containers.

R392-400-15. Wastewater Disposal Requirements.

(1) All wastewater shall be disposed of in accordance with state and local wastewater rules.

(3) The operator may use portable restroom facilities and wastewater holding tanks as determined by the health officer.

(4) The number of toilets shall be provided in accordance with Table 1.

TABLE 1

Minimum Numbers of Toilets Required

	Average Time at Gathering (hours)				
Peak Crowd	1	2	3	4	5
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78
15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416
each additional 10,000	15	25	38	50	63

(table continued for 6-10 hours)

Peak Crowd	6	7	8	9	10
1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813
each additional 10,000	75	88	100	113	125

(a) If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

(b) Five percent, with a minimum of one, of the required number of toilets shall be handicap accessible and shall be identified by the International Symbol of Accessibility in compliance with 36 CFR 1191 (July 1, 2011), Appendices B and D, of the Americans with Disabilities Act.

(c) For an event lasting longer than ten hours, the number of required toilets is calculated by adding the number of toilets for ten hours to the number of toilets for those hours over ten or a portion thereof, as determined in Table 1.

(d) The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity which pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the health officer may allow exemptions to these distances.

(e) The operator shall provide working hand wash stations at a minimum rate of one per ten portable toilets or portion thereof. The operator shall provide soap, water and single use towels at each hand wash station. Where conditions make the use of soap and water impractical, the health officer may allow sanitizing gel in place of soap and water. Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.

(f) The operator shall provide a minimum of one covered trash container for every ten portable toilets or portion thereof.

(g) The operator shall ensure that all portable toilets are of sound construction (such as non-absorbent polyethylene), easily cleanable, and durable.

(h) Each portable toilet must be secured against vandalism and adverse weather conditions by tie downs, anchors or similar

effective means.

(i) The operator shall contract with a liquid waste hauler that is permitted by the local health department in accordance with R317-550, Rules for Liquid Waste Operations.

(l) The operator shall ensure that all wastewater is removed from each portable toilet at least once every 24 hours or more frequently as necessary. On a case by case basis, the health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria. All wastewater removed shall be disposed of at a wastewater treatment facility in accordance with State and local wastewater disposal laws.

(m) The operator shall ensure that each portable toilet is serviced and sanitized as necessary to maintain sanitary conditions.

(n) At the conclusion of the gathering, each portable restroom unit must be serviced then removed within 48 hours. The health officer may extend or shorten this time because of the time of year, weather conditions, the nature of the event or to meet other public health related criteria.

R392-400-16. Penalty.

(1) Any person who violates any provision of this rule may be assessed a penalty as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

R392-400-17. Severability.

If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.

KEY: public health, temporary mass gatherings, special events
November 1, 2016 26-15-2
Notice of Continuation January 20, 2012

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10. Physician Services.
R414-10-1. Introduction and Authority.

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid recipients. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Chapter 12, UCA.

(2) Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50, October 1996 edition, and Sections 26-1-5 and 26-18-3, UCA.

R414-10-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Childhood health evaluation and care" (CHEC) means the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21.

(2) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(3) "Clinical Laboratory Improvement Amendments" (CLIA) means the federal Health Care Financing Administration program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Cognitive services" means non-invasive diagnostic, therapeutic, or preventive office visits, hospital visits, therapy, and related nonsurgical services.

(5) "Covered Medicaid service" means service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of service.

(6) "Current Procedural Terminology" (CPT) means the manual published by the American Medical Association that provides a systematic listing and coding of procedures and services performed by physicians and simplifies the reporting of services, which is adopted and incorporated by reference. Some limitations are addressed in R414-26.

(7) "Early and periodic screening, diagnosis, and treatment" (EPSDT) means the federally mandated program for children under the age of 21.

(8) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(9) "Health Common Procedures Coding System" (HCPCS) means a system mandated by the Health Care Financing Administration to code procedures and services. This system utilizes the CPT Manual for physicians, and individually developed service codes and definitions for nonphysician providers. The coding system is used to provide consistency in determining payment for services provided by physicians and noninstitutional providers.

(10) "Intensive, inpatient hospital rehabilitation service" means an intense rehabilitation program provided in an acute care general hospital through the services of a multidisciplinary, coordinated, team approach directed toward improving the ability of the patient to function.

(11) "Package surgical procedures" means preoperative office visits and preparation, the operation, local infiltration, topical or regional anesthesia when used, and the normal, uncomplicated follow-up care extending up to six weeks post-surgery.

(12) "Patient" means an individual who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(13) "Personal supervision" means the critical observation and guidance of medical services by a physician of a nonphysician's activities within that nonphysician's licensed scope of practice.

(14) "Physician services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided:

(a) within the scope of practice of medicine or osteopathy; and

(b) by or under the personal supervision of an individual licensed to practice medicine or osteopathy.

(15) "Prior authorization" means the required approval for provision of a service, that the provider must obtain from the Department before providing that service.

(16) "Professional component" means that part of laboratory or radiology service that may be provided only by a physician capable of analyzing a procedure or service and providing a written report of findings.

(17) "Provider" means an entity or a licensed practitioner of the healing arts providing approved Medicaid services to patients under a provider agreement with the Department.

(18) "Services" means the types of medical assistance specified in Sections 1905(a)(1) through (25) of the Social Security Act and interpreted in 42 CFR 440, October 1996 edition, which are adopted and incorporated by reference.

(19) "Technical component" means that part of laboratory or radiology service necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation.

R414-10-3. Client Eligibility Requirements.

Physician services are available to categorically and medically needy eligible individuals.

R414-10-4. Program Access Requirements.

(1) Physician services are available only from a physician who meets all requirements necessary to participate in the Utah Medicaid Program and who has signed a provider agreement.

(2) Physician services are available only from a physician who renders medically necessary physician services in accordance with his specific provider agreement and with Department rules.

(3) An eligible Medicaid client may seek physician services from:

(a) a physician in private practice who is an enrolled Medicaid provider;

(b) a Health Maintenance Organization (HMO) that has a contract with the Department;

(c) a federally qualified community health center; or

(d) any other organized practice setting recognized by the Department for providing physician services.

R414-10-5. Service Coverage.

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:

(a) Services rendered during a period the recipient was ineligible for Medicaid;

(b) Services medically unnecessary or unreasonable;

(c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;

(d) Services requiring prior authorization, but for which such authorization was not received;

(e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(f) Services fraudulently claimed;

(g) Services which represent abuse or overuse;

(h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.

(i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.

(j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.

(4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.

(5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. Services include:

(a) Sleep apnea or sleep studies, or both;

(b) pain clinics; and

(c) Eating disorders clinics.

(6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.

(7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.

(8) Cognitive or Office Services:

(a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.

(b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:

(i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.

(ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.

(iii) Medically necessary examinations associated with birth control medication, devices, and instructions.

(c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:

(i) Experimental or unproven medical procedures, practices, or medication.

(ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.

(iii) Infertility studies.

(iv) In-vitro fertilization.

(v) Artificial insemination.

(vi) Surrogate motherhood, including all services, tests, and related charges.

(vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.

(d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.

(e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.

(f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:

(i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or

(ii) Collecting a urine sample by catheterization.

(iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.

(g) Eye examinations are covered, but only once each calendar year.

(h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.

(9) Psychiatric Services:

(a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.

(b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, R414-45, may not be applied to psychiatric services.

(c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.

(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.

(10) Laboratory and Radiology Services:

(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill

for both the technical and professional component of the radiology service.

(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.

(11) Hospital Services:

(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.

(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:

(i) Consultation; and

(ii) Initial hospital care services.

(c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.

(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.

(12) Abortion, Sterilization and Hysterectomy:

(a) Abortion procedures are limited to:

(i) those where the pregnancy is the result of rape or incest; or

(ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October 1996 edition, which is adopted and incorporated by reference.

(13) Cosmetic, Plastic, or Reconstructive Services:

(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:

(i) correct a congenital anomaly;

(ii) restore body form or function following an accidental injury; or

(iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.

(14) Surgical Services:

(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.

(b) Surgical procedures are "package" services. The package service includes:

(i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;

(ii) the operation;

(iii) any topical, local, or regional anesthesia; and

(iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.

(c) Interpretation of "package" services:

(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.

(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.

(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.

(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(g) Preoperative examination and planning are covered as separate services only in the following circumstances:

(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;

(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.

(h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

(i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

(j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

(15) Diagnostic and Therapeutic Procedures:

(a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

(b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

(c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

(d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

(e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

(16) Anesthesia Services:

Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

(17) Transplant Services:

Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in R414-10A.

(18) Modifiers:

Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

(a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

(b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important supporting documentation must be submitted with the claim for review.

(c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

(d) Mandated services as defined by CPT and identified by modifier 32 are noncovered services.

(e) Reference laboratory services identified by modifier 90 are noncovered services.

(19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

(i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

(ii) Children through age five: Children's vitamins with fluoride.

(iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.

(g) Nutrients may be provided only as established in R414-71-6.

R414-10-6. Copayment Policy.

Each Medicaid client is responsible to pay a copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

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Notice of Continuation October 24, 2016 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.
R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Transition Program. Program participation is voluntary and allows an individual to transition out of an ICF/ID into the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

(1) The term "Intermediate Care Facility for the Mentally Retarded" (ICF/MR) has been replaced with the term "Intermediate Care Facility for Persons with Intellectual Disabilities" (ICF/ID). ICF/ID is equivalent to ICF/MR as described under federal law.

(2) "Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(3) "Program applicant" means an individual who meets eligibility requirements and submits an application to the Department during the open application period.

(4) "Slot" refers to the funding available for one individual to participate in the Program.

(5) "Representative" means a parent or guardian who assists a potential Program participant.

(6) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

R414-510-3. Eligibility Requirements.

Waiver services are potentially available to an individual who:

(1) receives ICF/ID benefits under the Medicaid State Plan;

(2) has been diagnosed with an intellectual disability or a related condition;

(3) meets ICF/ID level of care criteria defined in Section R414-502-8;

(4) meets state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and

(5) has resided in any Medicaid-certified, privately-owned ICF/ID located in Utah for at least 12 consecutive months.

R414-510-4. Program Access Requirements.

(1) Each fiscal year, the Department shall determine whether there are sufficient funds available to open slots in the Program. The Department shall stipulate to the amount of funds that it dedicates to the Program if funds are available.

(2) Based on funds dedicated to the Program, the Department shall estimate the number of slots available. The Department estimates the number of slots available by dividing the total amount of funds dedicated to the Program in a fiscal year by the state portion of the average daily ICF/ID rate.

(3) At its discretion, the Department may reserve a number of slots for individuals:

(a) who meet the eligibility requirements of Section R414-510-3;

(b) who receive a discharge notice from the ICF/ID in which they reside;

(c) who have no viable option for alternative ICF/ID placement; and

(d) who DSPD accepts for ICF/ID placement.

(4) During a fiscal year in which the Program receives funding for new applicants, the Department shall announce an open application period. The Department shall publicize the availability of the Transition Program in the following manner:

(a) The Department shall provide a letter to the administrator of each privately-owned ICF/ID, each ICF/ID resident and to the representative of each ICF/ID resident. The letter shall:

(i) describe the purpose and operation of the Program, including availability of funding;

(ii) identify the selection process utilized for the Program;

(iii) state that Program participation is voluntary; and

(iv) provide Program contact information.

(b) The Department shall post information about Program availability on the Utah Medicaid website.

(c) The Department shall hold at least one open and public meeting to introduce the Program and send notice of the meeting via letter to the administrator of each privately-owned ICF/ID, each ICF/ID resident and to the representative of each ICF/ID resident. The meeting must:

(i) cover the purpose of the Program;

(ii) cover how the Program operates with available funds;

(iii) cover how residents or guardians may apply for the Program; and

(iv) allow a time period for questions and answers.

(5) After the open application period, the Department places the name of each Program applicant on both a longevity list and a random list. On the longevity list, the Department ranks each Program applicant according to length of consecutive stay in any ICF/ID in the state of Utah. On the random list, the Department randomly ranks each Program applicant based on a computerized random selection.

(6) The Department then selects evenly first from the longevity list and then from the random list for placement in the Waiver until the amount of funding allocated to the Program is disbursed to care for the admitted individuals.

(7) The Department conducts a periodic alternate selection process as follows:

(a) The Department shall place the names of all ICF/ID residents who meet the eligibility requirements in Section R414-510-3 on both a longevity list and a random list. The use of longevity and random lists shall follow the same process as identified in Subsection R414-510-4(5) through (6), except that all eligible individuals are considered.

(b) The Department shall send a letter to each selected resident and their representative. The letter must comply with requirements noted in Subsection R414-510-4(4)(a)(i) through (iv), and describe how Department staff will contact the individual or representative by phone or in- person for the purpose of answering questions to allow the individual or representative to make an informed choice about participation in the Program.

(c) The Department shall make follow-up phone calls or in-person visits to each individual or representative to provide information that reiterates the requirements described in Subsection R414-510-4(a)(i) through (iv).

(d) In cases where a selected individual does not have or require a representative, a DSPD Transition Program coordinator will visit the selected individual in-person at the ICF/ID to verify if program participation is desired.

(e) When an individual or representative voluntarily confirms a desire to participate in the Program, the Department shall provide a letter to the ICF/ID administrator to inform the administrator of the choice of the individual or representative to participate in the Program.

(8) If an individual is selected for the Program and has a spouse who also resides in a Utah ICF/ID and who meets the eligibility criteria in Section R414-510-3, the Department shall provide an additional slot for the spouse to participate in the Program without affecting the number of available slots from

the longevity and random lists.

(9) Based on available funding, the Department shall continue to select eligible individuals through the aforementioned process until the Department exhausts the amount of funds committed to the Program.

(10) The Department shall keep the longevity list and random lists open for the sole purpose of filling slots vacated through Program attrition. If a Waiver participant who is admitted through the Program leaves the Waiver program for any reason, the Department shall contact and enroll the next person on the list who is interested in moving through the Program.

(11) The Department shall create new lists in accordance with Subsection R414-510-4(4) through (6) or (7) when there is funding available to open new Program slots.

R414-510-5. Service Coverage.

Services and limitations of the Program may be found in the Waiver State Implementation Plan.

R414-510-6. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with the Department to set rates for Waiver-covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

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R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

(7) Employees are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;

(b) critical incident;

(c) post accident;

(d) return to duty; and

(e) follow up.

(8) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary

action.

(7) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(8) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Drug and Alcohol Test Records.

(1) A separate confidential file of drug and alcohol test results and documents related to the last chance agreements shall be maintained and stored in the agency human resource field office.

(2) Files shall be retained in accordance with the retention schedule.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

July 1, 2014	**67-19-6**
Notice of Continuation October 31, 2016	**67-19-18**
	67-19-34
	67-19-35
	63G-2-3
	67-19-38

R512. Human Services, Child and Family Services.
R512-1. Description of Division Services, Eligibility, and Service Access.
R512-1-1. Purpose and Authority.

(1) The purpose of this rule is to clarify the scope of services the Division of Child and Family Services (Child and Family Services) provides to families in Utah.

(2) This rule is authorized by Section 62A-4a-102.

R512-1-2. Introduction.

(1) Pursuant to Sections 62A-4a-103 and 62A-4a-105, Child and Family Services is authorized to provide programs and services that support the strengthening of family values, including services that preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

(2) Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the assisting of youth who are ungovernable or who are runaways. Domestic violence services shall be made available to assist adult victims who have been abused or threatened by their partners.

(3) Child and Family Services shall provide protective services, services given in the family home, short-term temporary crisis placement services, out-of-home placements, and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by Child and Family Services.

(4) The programs administered by Child and Family Services have been established to help children remain with their families, to solve problems in their homes, and, if that is not possible, to place them in out-of-home care for as short a time as possible. When Child and Family Services finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to ensure a permanent family for the child. Domestic violence services shall provide comprehensive assistance to adult victims of domestic violence, their dependent children, and in some cases, to the abusive partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

(5) Child and Family Services shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services and also on Child and Family Services' website.

(6) The State Office of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include:

(a) Program planning,

(b) Practice guideline development,

(c) Training and consultation,

(d) Program financing,

(e) Administration of the Interstate Compact on Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA),

(f) Legislative and federal liaison, and

(g) Information and referral.

R512-1-3. Prevention Services.

Child and Family Services will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Account legislation.

R512-1-4. Intervention Services.

(1) Protective Services. Child abuse and neglect investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be screened for assessment and/or investigation in accordance with the provisions of Section 62A-4a-409. Child and Family Services' caseworkers recognize that parents have the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline their children. They also recognize that removal affects these rights, creating a long-term impact on children. Child and Family Services' caseworkers are dedicated to maintaining children with their family when circumstances and services can make it safe for the children to remain home. Child and Family Services will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in crisis placements may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in a crisis placement will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in a crisis placement, staff will arrange, as appropriate, visits with the child at the location designated by staff. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

(a) Access. Investigations and/or assessments will be conducted using all appropriate referrals of alleged child abuse or neglect.

(b) Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

(2) Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families may be provided in order to stabilize the family.

(a) Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, ungovernable, or a runaway.

(b) Eligibility. Youth who are either homeless or ungovernable or who have run away shall be eligible.

R512-1-5. In-Home Services.

(1) In-Home Services. Child and Family Services may offer services to families whose children are in their own homes, yet who are at risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in protective custody. These services may include child day care, protective supervision, and services for the preservation of families.

(a) Access. Referrals can be made from Child Protective Services or from Juvenile Court and other agencies.

(b) Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect.

(2) Domestic Violence Services. For adult victims of domestic violence and their minor children, shelter care facilities may be provided in order to protect the adult victim and their children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services may be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused partners eligible for domestic violence services may receive child care without a fee as part of the protective services provided to the family.

(a) Access. The adult victim of family violence shall have access to the services listed above by requesting protection or by referral.

(b) Eligibility. The only eligibility factor is that the adult victim shall have been abused by their partner or some other member of the family. The perpetrator may be assessed, through court order, for the costs of Child and Family Services providing these services.

R512-1-6. Out-of-Home Care Services.

(1) The following definitions apply to this section:

(a) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(b) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(c) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

(2) Foster care and group care. Child placement services may be provided when parents are unable to meet their children's needs within the family. Child and Family Services has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the ICPC. The intent of foster care or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, guardianship, or individualized permanency services. A permanency plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the permanency plan, and to project a likely date for returning the child to the family home or to another permanent home arrangement. A dispositional hearing shall be held every 12 months from the date of placement to determine the future status of the child. Foster care shall be provided in licensed family homes. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in the custody of Child and Family Services may be foster parents. Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with Rule R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with Rule R501-19.

(a) Access. Referrals can be made from Child Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local Child and Family Services office. Referrals for foster care or group care may be screened to determine whether placement is the best option. In most cases, services that are intended to prevent placement must first be provided, before foster care or group care will be considered by Child and Family Services.

(b) Eligibility. Temporary child custody must be given to the state by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster care or group care until age 18 years, or until age 21 years when ordered by the court.

(3) Transition to Adult Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age 14 years and older shall be required to be working toward at least one objective in developing independent living skills in their permanency plans.

(a) Access. Access shall be given only by a referral from the foster care caseworker.

(b) Eligibility. Foster children who are at least 14 years old and who are in the custody of the state shall be eligible.

(4) Adoption. This service provides adoptive homes for children in custody of the state who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption.

(a) The choice of an adoptive home is based on the best interests of the child.

(b) Adults who are residents of Utah who wish to adopt a child in Utah State custody may apply to the Utah Foster Care Foundation for consideration.

(c) Adults who are residents of other states who wish to adopt a child in Utah State custody must meet the standards to adopt a child in their state custody as well as to comply with ICPC requirements.

(d) Children whose special needs make it more difficult to find appropriate adoptive homes may be eligible for adoption assistance, which may include Medicaid and a monthly subsidy payment based on federal qualifying factors.

(e) To be eligible, the child must be in custody of the state and be legally freed for adoption, and the court must determine that adoption is the best permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval based on Rule R512-41. Authorization of adoption assistance for children with special needs shall be determined by Child and Family Services based on federal law.

(5) Provider Services. Persons applying to be foster care or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training that may be required for some types of care. Annual reapproval is required.

(a) Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as crisis placements, may apply at the Utah Foster Care Foundation.

(b) Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards before approval is granted.

R512-1-7. Collection of Fees.

Child and Family Services' regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For hardship situations, a fee reduction can be considered by the director of Child and Family Services.

R512-1-8. Civil Rights and Due Process.

Child and Family Services shall comply with the Department of Human Services policy of Civil Rights. Child and Family Services seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service that is requested and received through Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by Child and Family Services when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility

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62A-4a-105

R512. Human Services, Child and Family Services.
R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living.
R512-2-1. Purpose and Authority.

(1) The purpose of this rule is to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

(2) This rule is authorized by Section 62A-4a-102.

R512-2-2. Child Welfare/Family Preservation and Support Services.

(1) The Division of Child and Family Services (Child and Family Services) adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

(a) 42 USC 621, 622, 623, 624, 626, 627, 629, 629a, 629b, 629c, 629d, 629e, 629f, 629g, 629i, as amended by Public Law 113-183 (September 29, 2014), incorporated by reference; and

(b) 45 CFR Parts 1355 and 1357, as updated on January 6, 2012, incorporated by reference.

R512-2-3. Title IV-E Foster Care, Adoption, and Independent Living.

(1) Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

(a) 42 USC 670, 671, 672, 673, 673a, 673b, 674, 675, 675a, 676, 677, 679b, as amended by Public Law 113-183 (September 29, 2014), incorporated by reference; and

(b) 45 CFR Part 1356, as updated on January 6, 2012, incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility
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Notice of Continuation October 13, 2016 62A-4a-105

R512. Human Services, Child and Family Services.
R512-31. Foster Parent Due Process.
R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-2. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-3. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home, if the foster parent disagrees with the decision, unless the removal is for the purpose of:

(a) Returning the child to the child's natural parent or legal guardian.

(b) Immediately placing the child in an approved adoptive home.

(c) Placing the child with a relative, as defined in Section 78A-6-307, who obtained custody or asserted an interest in the child within the preference period described in Section 78A-6-307.

(d) Placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C., Section 1915.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication with the foster parent and by written Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the Foster Parent Conflict Resolution Procedure, and notice regarding the ability of the foster parent to petition the juvenile court judge currently assigned to the case for a review and determination of the appropriateness of the decision by Child and Family Services to remove the child from the foster home, if the child has been in the foster home for 12 months or longer, in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by written Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the region director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services, the foster parent shall have the opportunity to request a review, to be held before removal of the child, by a third party neutral fact finder. If the child has been placed with the foster parents for a period of at least two years, the foster parent may request a review to be held before removal of the child, by:

(i) The juvenile court judge currently assigned to the child's case, or

(ii) If the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(d) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Section 62A-4a-206.

(e) If a child is removed from a foster home based upon the child's statement alone, an agency conference will be held within five business days of a request by the foster parent. If the foster parent is not satisfied with the results of the agency conference, Child and Family Services shall request an expedited administrative hearing or expedited juvenile court hearing. No formal action may be taken with regard to that foster parent's license until after all conflict resolution procedures have been completed.

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The administrative law judge shall determine if Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or

dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Section 62A-4a-206.

KEY: child welfare, foster care, due process

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	63G-4-201
	78A-6-318

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for confidentiality and testing of children with reportable communicable diseases.

(2) This rule is authorized by Section 62A-4a-102.

R512-32-2. Definitions.

(1) "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

(2) "Primary care medical provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services (Child and Family Services). (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(3) "UDHS" means the Utah Department of Human Services.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of Communicable Disease Control.

(6) "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

(7) "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

(8) "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

(9) "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

(10) "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

(11) "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63G-2-304.

R512-32-3. Confidentiality.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: Child and Family Services administrators, program administrators, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

(2) Due to the GRAMA and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/Assessment" section of the case record.

R512-32-4. Identification and Testing of Children with Communicable Disease.

(1) Testing at Agency's Request.

(a) Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of Child and Family Services. When Child and Family Services has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

(b) If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

(c) If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(8), a child who may be at risk as defined in R512-32-1(9), or medical information received by the caseworker, foster parent, or provider.

(e) Communicable disease testing requires written, informed consent. If Child and Family Services has custody and guardianship of a child, Child and Family Services has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of Child and Family Services refuses to be tested, the caseworker is required to contact UDOH, the local health department, and the Attorney General's office immediately upon hearing of the refusal.

(f) When a parent of a child in the custody of Child and Family Services is known or reports to be involved in high risk behaviors, the caseworker shall contact UDOH for consultation.

(g) All contacts with UDOH shall be documented in the child's case record and filed under the "Medical/Assessment" section of that record.

(2) Testing at Minor's Request.

(a) A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

(b) When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the Child and Family Services program administrator or deputy director.

R512-32-5. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering that a child has a communicable disease, the caseworker, in collaboration with the Fostering Healthy Children RN, will contact the Local Health Department (LHD) in their area for consultation to define the precautions necessary to mitigate any health risks to others. After consultation with the LHD and prior to placing the child, the caseworker shall hold a professional staffing, including the child's primary care

medical provider (as defined in R512-32-1, Definitions), to identify the best placement to meet the child's needs. Once a placement is identified, a Child and Family Team Meeting will be held to address the child's health issues and make sure the caregiver is willing to participate in maintaining the safety of all involved. Additional education and training will be provided as necessary.

R512-32-6. Considerations Regarding Placement of a Child With a Communicable Disease.

(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the "Medical/Assessment" section of that record.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(1) and R512-32-5(2) shall be accomplished without delay.

R512-32-7. Pick-Up Orders.

(1) Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in High Risk Behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-8. Returning a Minor to the Parent's Custody.

(1) If a minor in Child and Family Services custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

(2) If a minor in Child and Family Services custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-9. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

(1) When a minor in the custody of Child and Family Services is identified by UDOH as having been exposed to a person who has tested positive, UDOH shall contact the Child and Family Services program administrator or deputy director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The caseworker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
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26-6-18
26-6-27

R512. Human Services, Child and Family Services.

R512-40. Recruitment, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services.

R512-40-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes.

(2) This rule is authorized by Sections 53-10-108, 62A-4a-102, 62A-4a-105, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

R512-40-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent" means a couple or individual who completes Child and Family Services training for prospective adoptive parents and is approved by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Home study" means a pre-placement adoption evaluation defined in Section 78B-6-128 regarding the capacity of the adoptive parents, their family, and their resources available to meet the needs of a child in custody.

(d) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(e) "Permanency" means the establishment and maintenance of a legally permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(f) "Residing" means living in the same household on an uninterrupted basis for 30 days or more or on an intermittent basis.

R512-40-3. Recruitment of Adoptive Families for Children in the Custody of Child and Family Services.

(1) Child and Family Services seeks to recruit permanent adoptive families for children in state's custody whose primary permanency goal is adoption, or whose parents have voluntarily relinquished their parental rights or whose parental rights have been terminated by a court.

(2) Recruitment of an adoptive family for children in state's custody is accomplished by:

(a) Discussing with the adoptive applicant or relative caring for the child about adopting the child.

(b) Targeting efforts to identify family members and others known to the child to consider adoption.

(c) Coordinating with Child and Family Services resource family consultants throughout the state about potential adoptive families for a child.

(d) Website listing of a child for whom there is not an identified adoptive family within 30 days of the primary permanency goal of adoption or whose parents' parental rights are terminated.

(e) Requiring all licensed child placing adoption agencies in Utah to inform adoptive applicants that there are children in state's custody available for adoption in accordance with Section 62A-4a-607.

R512-40-4. Requirements for Persons Applying for Adoptive Placement of a Child in the Custody of Child and Family Services.

(1) Legally married couples and single adults, including relatives of a child and employees of Child and Family Services, may apply to adopt a child in state's custody based on their ability to provide a permanent family for the child. Adoptive applicants shall:

(a) Apply in the region where they live.

(b) Complete the adoption training program approved by Child and Family Services, with one exception:

(i) Training for relatives, as defined in Section 78A-6-307, who are adopting a child will be based on needs identified on a case-by-case basis.

(c) Be assessed and approved as an adoptive parent by Child and Family Services following completion of a home study pursuant to R512-40-5.

(d) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards required to be licensed in R501-12, or receive a written waiver from Child and Family Services for a specific standard.

(e) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-40-5. Home Study Requirements for Adoption.

(1) A home study must be completed by the Department of Human Services, Office of Licensing, or by Child and Family Services, or by a licensed child placing adoption agency contracted with Child and Family Services.

(a) A prospective adoptive parent may not be approved for the adoptive placement of a child in state's custody unless:

(i) The prospective adoptive parent is legally married or single and not cohabiting.

(ii) The prospective adoptive parent and all adults residing in the home have completed criminal background checks, including a national fingerprint-based check that is approved according to criteria specified in Sections 53-10-108, 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(iii) A child abuse registry check is completed by Child and Family Services for the prospective adoptive parent and all adults residing in the home, including a check of child abuse registries in any states in which the prospective adoptive parent and all adults residing in the home have resided in the five years prior to application to adopt that is approved according to criteria specified in Sections 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(2) The home study should be consistent with the standards of the Child Welfare League of America (www.cwla.org).

(a) The following factors are critical in the success of adoptive placements and are required content in adoptive applicant interviews and home study documentation:

(i) Commitment to the legal adoption of the child as a permanent member of the family.

(ii) Stable marital relationship and/or commitment and stability in existing family relationships and/or the ability to sustain long-term relationships that would provide a base for an adoptive child.

(iii) Proper motivation and realistic expectations of a child who has experienced trauma and other effects of abuse and neglect.

(iv) Emotional openness, empathy, and flexibility.

(v) Strong social support system for both the parent and child.

(vi) Knowledge of resources to help raise a child.

(b) The following factors may significantly contribute to adoption disruption and the following are required content in adoptive applicant interviews and home study documentation:

(i) History of emotional or psychological problems or substance abuse.

(ii) Marital difficulties and incompatibilities that seriously compromise the ability to meet the needs of the child.

(iii) Serious problems in child rearing.

(iv) Unrealistic expectations of self and child.

(v) Impulse control disorders.

(vi) Disruptive and/or crisis filled lifestyle.

(vii) Criminal activity.

(c) The home study assessment and family evaluation will include information gathered from the following:

(i) Criminal background clearances for all adults in the home as described in subparagraph 1a(ii) above.

(ii) Child abuse registry clearances for all adults in the home as described in subparagraph 1a(iii) above.

(iii) Four written statements of reference, three of which are positive, regarding the applicant's stability and parenting capacity, with one exception:

(A) Two positive written statements of reference if the applicant is a relative of the child as defined in Section 78A-6-307.

(iv) Psycho-social information gathered from the prospective adoptive parent and family members.

(v) Home visits and interviews to assess the prospective adoptive parent in the following areas:

(A) Marriage and personal stability.

(B) Ability to manage stress.

(C) Parenting skills and emotional openness and flexibility to provide continuity of a caring relationship.

(D) Capacity to parent a child who has experienced trauma and who may have other special needs.

(E) How the children living at home will be affected.

(F) How supervision for the child will be arranged in accordance with the child's age and developmental ability at times when the prospective adoptive parent is not able to be in the home.

(vi) Health status verification regarding the prospective adoptive parent based on a doctor's examination made within six months prior to the date of application.

(vii) Financial status that verifies income sufficient to provide for a child's needs.

(viii) Home health and safety assessment.

(d) The evaluation of the family shall include their strengths and challenges.

(e) To preserve family connections for adopted children, home study requirements for relatives or friends known to the child as defined in Section 78A-6-307 that do not impact the health and safety of the child may be waived.

(f) Recommendations shall be made regarding the specific child intended to be adopted or the age and type of child who can best fit into the home to ensure the healthy development of the child.

R512-40-6. Follow-up Services.

(1) The identified committee in the region that reviews home studies will review each home study provided by the Department of Human Services, Office of Licensing, and any other detailed information regarding the adoptive parent. As a result of the review, the region committee will determine if the adoptive parent is approved to receive adoptive placements, if the adoptive parent is denied for adoptive placements, or if more information is needed from the adoptive parent.

(a) If the adoptive parent is approved for adoptive placements, the region committee (or region designee) will send a letter to the adoptive parent to let them know that they are approved for adoptive placements.

(b) When Child and Family Services determines through the region committee that there are concerns about making an adoptive placement with the adoptive applicant:

(i) The region committee or designee will provide their concerns in writing to designated region staff. The concerns will include any steps an adoptive applicant may take in order remedy concerns.

(ii) Two designated region staff members will meet with the adoptive applicant and review the concerns outlined by the region committee, including whether the concerns can be resolved.

(iii) The region designees will take clarifying information

and/or steps that the adoptive applicant has taken to remedy concerns back to the region home study committee.

(iv) If the adoptive applicant has been able to remedy the concerns to the satisfaction of the region committee, the region committee will approve the adoptive parent to receive adoptive placements.

(v) If the adoptive applicant is unable or unwilling to remedy the concerns, a formal, written letter will be sent to the adoptive applicant explaining that Child and Family Services will not be making an adoptive placement with them.

(c) If an adoptive applicant is denied for adoptive placements, the family may request that the Child and Family Services region director or designee review the reasons for the denial. The Child and Family Services region director or designee is the only person who has the authority to reverse a denial.

(2) If a home study was conducted to evaluate a family for a specific child or a relative or friend known to the child as defined in Section 78A-6-307,the home study will be reviewed by the child's caseworker or designated adoption worker to determine if the adoptive parent is the best family to meet the child's needs.

(3) All adoptive home studies will require an updated amendment at least every 18 months to be considered current for child placement or adoption:

(a) A family licensed as a foster parent will require a home study update every 12 months to include background and child abuse registry clearances and to address any changes in the circumstances of the family.

(b) A family that is not licensed as a foster parent or has let their license lapse must have a home study update within 18 months of the original home study to include background and child abuse registry clearances and address any changes in the circumstances of the family.

(c) A home study that is older than two years will require new training requirements and a complete new home study.

(4) The home study document will be maintained in the Child and Family Services offices and will be destroyed according the retention schedule.

KEY: adoption

May 9, 2016	**53-10-108**
Notice of Continuation October 13, 2016	**62A-4a-102**
	62A-4a-105
	62A-4a-205.6
	62A-4a-607
	78B-6-128

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of Child and Family Services.

(2) This rule is authorized by Sections 62A-4a-102, 78A-6-307, 78B-6-128, and 78B-6-133.

R512-42-2. Definitions.

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Relative" is defined in Section 78A-6-307.

R512-42-3. Adoption by Relatives.

(1) A relative who has a relationship with a child in state's custody who may become available for adoption may apply to adopt a particular child.

(2) The application and adoptive evaluation (commonly called a home study) will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with R512-41 and Sections 78B-6-128 and 78B-6-133, based upon the best interest of the child.

(a) Any preferential consideration of a relative defined in Section 78A-6-306 for the initial placement of a child in state's custody expires in 120 days of the shelter hearing.

(b) When a relative who has a significant and substantial relationship with the child as set forth in Section 78B-6-133, and who was not notified by Child and Family Services within 120 days and comes forward when a child in state's custody has a permanency goal of adoption, the long-term needs of the child to have connection with family will be a priority consideration as long as the relative has the ability to meet the long-term physical, emotional, cognitive, and special needs of the child.

(3) When the 120-day time period for preferential consideration for a relative of a child in custody expires, the court shall consider an adoptive petition based on the best interest of the child and shall include:

(a) Where the child is placed.

(b) Where the child has resided for six months.

(c) Relatives who have filed a written statement with the court within 120 days of the date of the shelter hearing to:

(i) request immediate placement of the child; and

(ii) express the petitioner's intention of adopting the child.

(d) Who is a relative:

(i) with whom the child has a significant and substantial relationship; and

(ii) who was unaware, within the first 120 days after the day on which the shelter hearing is held, of the child's removal from the child's parent; or

(e) If the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; and

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed Child and Family Services or the court that the individual is unwilling or unable to adopt the child.

KEY: adoption

April 7, 2016	**62A-4a-102**
Notice of Continuation October 13, 2016	**78A-6-307**
	78B-6-102
	78B-6-117
	78B-6-128
	78B-6-133
	78B-6-137

R512. Human Services, Child and Family Services.
R512-51. Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs.
R512-51-1. Purpose and Authority.

(1) The purpose of this rule is to enable the Division of Child and Family Services (Child and Family Services) to collect fees for processing criminal background screenings. These screenings are for prospective foster and adoptive parents of children in state custody and other adults in the home as required by Public Law 109-248 and Section 78A-6-308. These screenings are also for employees of other licensed programs upon request of the Office of Licensing as authorized by Section 62A-2-120, as capacity allows.

(2) This rule is authorized by Section 62A-4a-102.

R512-51-2. Fee Collection for Electronic Fingerprint Scanning.

(1) It is the responsibility of Child and Family Services Regional Offices to collect fees for electronic fingerprint scanning for the purpose of criminal background screening for prospective foster and adoptive parents of children in state custody and other adults in the home and for employees of other Department of Human Services licensed programs.

(2) The amount of the fee charged for electronic fingerprint scanning will be approved by Child and Family Services as required by Section 62A-4a-102 and will not exceed the amount being charged for the same service from the Department of Public Safety, Bureau of Criminal Identification.

R512-51-3. Fee Collection for Cost of Submission of Electronic Fingerprints for Criminal Background Check.

(1) Child and Family Services has the option to collect fees for all or part of the actual cost of submission of electronic fingerprints for criminal background checks through the Department of Public Safety, Bureau of Criminal Identification and the Federal Bureau of Investigation.

(2) Child and Family Services may elect to pay all or part of this cost for prospective foster and adoptive parents of children in state custody and other adults in the home, subject to legislative funding for this purpose.

(3) Child and Family Services will not pay any of the cost of submission of electronic fingerprints for criminal background checks for employees of other Department of Human Services licensed programs, but may submit the electronic fingerprints upon verification of payment of those fees by the Office of Licensing or designee.

KEY: criminal background screening, fees, foster care, adoption
October 22, 2009 Pub. L. No. 109-248
Notice of Continuation October 13, 2016 62A-4a-102
78A-6-308

R512. Human Services, Child and Family Services.
R512-80. Definitions of Abuse, Neglect, and Dependency.
R512-80-1. Purpose, Interpretation, and Authority.

(1) Purpose. Under Utah law, Child and Family Services is responsible for providing child welfare services and protecting children from abuse, neglect, and dependency. In determining what constitutes abuse, neglect, or dependency, the definitions in Sections 62A-4a-101, et. seq., Sections 78A-6-105, et. seq., the Criminal Code, these Administrative Rules, and court opinions shall apply. These definitions are intended to clarify those definitions or judicial opinions. Conduct that qualifies as abuse, neglect, or dependency under a criminal statute or the Judicial Code or under Child and Family Services' civil statutes (Sections 62A-4a-101, et. seq.), however, shall qualify as abuse, neglect, or dependency even if these definitions inadvertently fail to bring such conduct within the scope of a particular definition. Some criminal statutes recognize defenses to abuse, neglect, or dependency that may not be applicable in Child and Family Services' civil investigations of child abuse, neglect, or dependency.

(2) Interpretation. Child and Family Services' statutes and these definitions shall be interpreted broadly to protect children from abuse, neglect, or dependency. These definitions shall be applied and interpreted according to the following principles:

(a) These definitions supersede earlier definitions.

(b) In cases of ambiguity, the Child and Family Services' definition shall be construed to harmonize with the relevant statutory definitions (as interpreted by the courts) and to further Child and Family Services' statutory responsibility to protect children and act in the best interest of the child.

(3) Authority. This rule is authorized by Section 62A-4a-102.

R512-80-2. Definitions.

(1) "Abandonment" means conduct by either a parent or legal guardian showing a conscious disregard for parental obligations where that disregard leads to the destruction of the parent-child relationship, except in the case of the safe relinquishment of a newborn child pursuant to Section 62A-4a-802. Abandonment also includes conduct specified in Section 78A-6-508.

(2) "Abuse" is as defined in Section 78A-6-105. It includes but is not limited to child endangerment, Domestic Violence Related Child Abuse, emotional abuse, fetal exposure to alcohol or other harmful substances, dealing in material harmful to a child, Pediatric Condition Falsification or medical child abuse (formerly Munchhausen Syndrome by Proxy), physical abuse, sexual abuse, and sexual exploitation.

(3) "Child endangerment" means subjecting a child to threatened harm. This also includes conduct outlined in Sections 76-5-112 and 76-5-112.5.

(4) "Chronic abuse" is as defined in Section 62A-4a-101.

(5) "Chronic neglect" is as defined in Section 62A-4a-101.

(6) "Cohabitant" is as defined in Section 78B-7-102. (See Definitions in Administrative Rule R512-205.)

(7) "Custodian" means a person who has legal custody of a child or a person responsible for a child's care as defined in Section 62A-4a-402.

(8) "Dealing in material harmful to a child" means distributing (providing or transferring possession), exhibiting (showing), or allowing immediate access to material harmful to a child or any other conduct constituting an offense under Sections 76-10-1201 through 1206.

(9) "Dependency" is as defined in Section 62A-4a-101. Dependency includes safe relinquishment of a newborn child as provided in Section 62A-4a-802.

(10) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct. (See Definitions in Administrative Rule R512-205.)

(11) "Educational neglect" means failure or refusal to make a good faith effort to ensure that a child receives an appropriate education, after receiving notice that the child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner in accordance with Sections 78A-6-105 and 78A-6-319.

(12) "Emotional abuse" means engaging in conduct or threatening a child with conduct that causes or can reasonably be expected to cause the child emotional harm. This includes but is not limited to:

(a) Demeaning or derogatory remarks that affect or can reasonably be expected to affect a child's development of self and social competence; or

(b) Threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting.

(13) "Environmental neglect" means an environment that poses an unreasonable risk to the physical health or safety of a child.

(14) "Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect. Failure to protect includes the conduct of a non-abusive parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the abuse or neglect or the alleged perpetrator's identity.

(15) "Failure to thrive" means a medically diagnosed condition in which the child fails to develop physically. This condition is typically indicated by inadequate weight gain.

(16) "Fetal exposure to alcohol or other harmful substances" means a condition in which a child has been exposed to or is dependent upon harmful substances as a result of the mother's use of illegal substances or abuse of prescribed medications during pregnancy, or has fetal alcohol spectrum disorder.

(17) "Harm" is as defined in Section 78A-6-105. (See also the definition of "threatened harm".)

(18) "Material harmful to a child" means any visual, pictorial, audio, or written representation (in whatever form, including performance) that includes pornographic or sexually explicit material, including nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that:

(a) Taken as a whole, appeals to the prurient interest in sex of a child, and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a child, and

(c) Taken as a whole does not have serious value for a child. "Serious value" includes only serious literary, artistic, political, or scientific value for a child.

(19) "Medical neglect" means failure or refusal to provide proper or necessary medical, dental, or mental health care or to comply with the recommendations of a medical, dental, or mental health professional necessary to the child's health, safety, or well-being. Exceptions and limitations are as provided in Section 78A-6-105.

(20) "Molestation" is as defined in Section 78A-6-105.

(21) "Neglect" is as defined in Section 78A-6-105. It includes but is not limited to abandonment, educational neglect, environmental neglect, failure to protect, failure to thrive, medical neglect, non-supervision, physical neglect, and sibling at risk.

(22) "Non-supervision" means the child is subjected to accidental harm or an unreasonable risk of accidental harm due to failure to supervise the child's activities at a level consistent with the child's age and maturity.

(23) "Pediatric Condition Falsification" (formerly Munchausen Syndrome by Proxy) means a cluster of symptoms or signs, circumstantially related, in which the parent or

guardian misrepresents information and/or simulates or produces illness in a child, has knowledge about the etiology of the child's illness but denies such knowledge, seeks multiple medical procedures, or acute symptoms and signs of the illness cease when the child is separated from the parent or guardian.

(24) "Perpetrator" means a person substantially responsible for causing child abuse or neglect, or a person responsible for a child's care who permits another to abuse or neglect a child. (See also Section 76-5-109.)

(25) "Physical abuse" means non-accidental physical harm or threatened physical harm of a child that may or may not be visible. It includes unexplained physical harm of an infant, toddler, disabled, or non-verbal child. "Physical harm" includes but is not limited to "physical injury" and "serious physical injury" as defined in Section 76-5-109.

(26) "Physical neglect" means failure to provide for a child's basic needs of food, clothing, shelter, or other care necessary for the child's health, safety, morals, or well-being.

(27) "Serious harm" includes but is not limited to "serious physical injury" as defined in Section 76-5-109.

(28) "Severe abuse" is as defined in Section 78A-6-105.

(29) "Severe neglect" is as defined as in 78A-6-105.

(30) "Sexual abuse" is as defined in Section 78A-6-105. Sexual abuse also includes forcing a child under 18 years of age into marriage or cohabitation with an adult in an intimate relationship.

(31) "Sexual exploitation" is as defined in Section 78A-6-105.

(32) "Sibling at risk" means a child who is at risk of being abused or neglected because another child in the same home or with the same caregiver has been or is abused or neglected.

(33) "Threatened harm" means any conduct that subjects a child to unreasonable risk of harm or any condition or situation likely to cause harm to a child. (See definition of "harm".)

KEY: child welfare
March 15, 2012 **62A-4a-102**
Notice of Continuation October 13, 2016

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.

(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.

(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.

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 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.

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 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 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 in the Recovery Process and Using Your Recovery Story as a Recovery Tool;

(f) Dynamics of Change;

(g) Strengthening the Peer Specialist's recovery;

(h) Ethics of Peer Support;

(i) Professional relationships, boundaries and limits;

(j) Scope of Peer Support;

(k) Cultural Competence: Self-Awareness - Cultural Identity;

(l) Stigma and Labeling;

(m) Community resources to support individuals in recovery;

(n) Assisting individuals in Accomplishing Recovery Goals;

(o) Coach, Mentor, and Role Model recovery;

(p) Assist in identification of natural, formal and informal supports;

(q) Stress Management Techniques;

(r) Assisting individuals in reaching educational and vocational goals;

(s) Crisis prevention; and

(t) Assist with physical health and wellness.

(2) The curriculum must be strength based and 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.

(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 training program and have a valid certificate from that training.

R523-5-7. Requirements to Remain Qualified as an Adult Peer Support Specialist.

(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, 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 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 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.

KEY: peer support specialists, PSS program, certification of programs, substance use disorder

October 11, 2016 62A-15-402

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

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

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.

(g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3) and R539-3-7(4).

(h) "Form" means a standard document required by Division rule or other applicable law;

(i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;

(l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(m) "Qualifying Acquired Neurological Brain Injury" means an eligible International Classification of Diseases code diagnosis from the most recent revision of the classification, clinical modification, as outlined in Division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses.

(n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(r) "Support Coordinator" is an employee of the Division or an individual contracted with the Division to provide assistance in assessing the needs of, and developing services and supports for, persons receiving Division funding. Support Coordinators complete written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitor the quality of the services provided.

(s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(8).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental

Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability or related conditionas set forth in Section 62A-5-101(8).

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This section does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Subsections R539-1-6 and R539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-510, where the Department

of Health determines that sufficient funds are available, a person meeting the eligibility requirements set forth by the Department of Health in Subsection R414-510-3 may receive Medicaid Home and Community-Based Waiver Services by transitioning out of an ICF/ID into the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions.

(4) Pursuant to Section R414-502, where the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, a person may be found eligible for funding through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions when all other eligibility requirements of Section R414-502 are met.

(5) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable and have a physical disability.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Subsections R539-1-4 and R539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons with physical disabilities may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person who is eligible for waiver service through the Medicaid Home and Community-Based Waiver for People with Disabilities is not eligible for respite services.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the

eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented qualifying acquired neurological brain injury from a licensed physician (MD or DO).

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(2) and (8), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Subsections 62A-5-105(2)(b) and(c) the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements for Waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(5), R539-1-7(4), and R539-1-9(4) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Sections R414-302 and 42 CFR 435.910, 2014 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
October 25, 2016 62A-5-103
Notice of Continuation November 5, 2012 62A-5-105

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3.1. The bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3.2. Release of liability shall be conditioned upon compliance with the rules and orders of the Board.

4. For all drilling or operating wells, the bond amounts for individual wells and blanket bonds required in subsections 5. and 6. represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in subsection 4.1.

4.1. The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule.

4.2. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.3. If the division finds that a well subject to this bonding rule is in violation of Rule R649-3-36., Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs.

4.4. The division shall provide written notification to an operator found in violation of Rule R649-3-36., and identify the need to establish increased bonding for shut-in wells.

4.4.1. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval.

4.4.2. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells.

4.4.3. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. The bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least $1,500, for each such well.

5.2. For wells of more than 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least $15,000 for each such well.

5.3. For wells of more than 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least $30,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least $60,000 for each such well.

6. If, prior to the July 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least $15,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least $120,000 shall be required.

6.4. Subsequent to the July 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond.

6.4.1. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division.

6.4.2. In those cases where operator qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.3. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.4. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the Board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the Board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by Rule R649-10., Administrative Procedures.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations that would result in suspension or revocation of the suretys or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a

reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator that is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in subsections 5. and 6. of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations that might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in subsections 5. and 6.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under subsection15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in subsection 6.4., and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.

14.4. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells affected by the transfer of ownership.

14.5. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:

14.5.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.

14.5.2. The request shall describe each well by reference to

its well name and number, API number, and its location, as described by the section, township, range, and county, and shall also include a proposed effective date for the operator change.

14.5.3. The request shall contain the endorsement of the new operator accepting such change of operator.

14.5.4. The request shall contain evidence of the new operator's bond coverage.

14.5.5. The request may include a request to cancel liability for the well(s) included in the operator change that are listed under the existing operator's bond upon approval by the division of an adequate replacement bond in the name of the new operator.

14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.

14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well(s), the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well(s) and the proposed new operator.

14.7. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with subsection 14.5.5., and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

14.8. If all of the wells covered by a bond are affected by an operator change, the bond may be released by the division in accordance with subsection 15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for all wells covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in subsection 15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the Board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with subsection 15.1.1., the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to subsection 15.1.5., or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in subsection 15.3. shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in subsection 15.3. shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the Board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in subsection

15.3., in addition to the notice requirements of the Board procedural rules.

16.4. After proper notice and hearing, the Board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the Board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of subsection 16.7., then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square.

1.1.No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool.

1.2. No oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

R649-3-3. Exception to Location and Siting of Wells.

1. Subject to the provisions of R649-3-11.1.2, the division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an

oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with such activity, the operator shall submit Form 3, Application for Permit to Drill, Deepen, or Plug Back and obtain approval. Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.

2. The following information shall be included as part of the complete Application for Permit to Drill, Deepen, or Plug Back.

2.1. The telephone number of the person to contact if additional information is needed.

2.2. Proper identification of the lease as state, federal, Indian, or fee.

2.3. Proper identification of the unit, if the well is located within a unit.

2.4. A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, that shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.

2.5. A copy of the Division of Water Rights approval or the identifying number of the approval for use of water at the drilling site.

2.6. A drilling program containing the following information shall also be submitted as part of a complete APD.

2.6.1. The estimated tops of important geologic markers.

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the owner's or operator's plans for protecting such resources.

2.6.3. The owner's or operator's minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency.

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.

2.6.5. The type and characteristics of the proposed circulating medium or mediums to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system.

2.6.6. The anticipated type and amount of testing, logging, and coring.

2.6.7. The expected bottomhole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, H_2S rules are found in R649-3-12 expected to be encountered, along with contingency plans for mitigating such identified hazards.

2.6.8. Any other facets of the proposed operation that the lessee or operator desires to point out for the division's consideration of the application.

2.6.9. If an Application for Permit to Drill, Deepen, or Plug Back is for a proposed horizontal well, a horizontal well diagram clearly showing the well bore path from the surface through the terminus of the lateral shall be submitted.

2.7. Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.

2.8. If located on State or Fee surface, an APD will not be approved until an Onsite Predrill Evaluation is performed as outlined in R649-3-18.

3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.

5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.

6. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. Approval shall be given if it appears that a bond has been furnished or waived, as required by R649-3-1, Bonding, and the contemplated work is not in violation of any rule or order of the board.

7. An operator or owner who applies for an APD in an area not subject to a special order of the board establishing drilling units, may contemporaneously or subsequently file a Request for Agency Action to establish drilling units for an area not to exceed the area reasonably projected by the operator or owner to be underlaid by the targeted reservoir.

8. An APD for a well within the area covered by a proper Request for Agency Action that has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.

9. An exception to R649-3-4-8 shall be made and a permit shall be issued by the division if an owner or operator files a sworn statement demonstrating to the division's satisfaction that on and after the date the Request for Agency Action requesting the establishment of drilling units was filed, or the action of the division or board was taken; and

9.1. The owner or operator has the right or obligation under the terms of an existing contract to drill the requested well; or

9.2. The owner or operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless he is permitted to commence the drilling of the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

1. Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well.

2. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet.

3. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number or name of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances for Vertical Drilling.

1. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

2. All wells shall be drilled such that the surface location of the well and all points along the intended well bore shall be within the tolerances allowed by R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no

well may be intentionally deviated unless the operator shall first file application and obtain approval from the division.

1.1. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program.

1.2. An application pertaining to a well with a surface location outside the tolerances allowed by R649-3-2 or the appropriate board order, but with the point of penetration of the targeted productive zone(s) and bottom hole location within said tolerances, may be approved by the division without notice and hearing conditioned upon the operator filing a certification included with the application that it will not perforate and complete the well in any other zone(s) outside of said tolerances without complying with the requirements of R649-3-11.1.1. Under these circumstances, no additional exception location approval under R649-3-3 is required.

1.3. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices for Hydrogen Sulfide H_2S Areas and Formations.

1. This rule shall apply to drilling, redrilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H_2S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H_2S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. All proposed drill site locations shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc.

3.1. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes.

3.2. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas.

4.1. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow all personnel normally involved on a drilling location immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area near the well location.

6. Each drill site shall have an H_2S detection and monitoring system that activates audible and visible alarms when the concentration of H_2S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H_2S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H_2S might accumulate. Portable H_2S detection equipment capable of sensing an H_2S concentration of 20 ppm shall be available for all working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at all times shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well location and shall be easily visible from all areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H_2S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the rig and along all access routes to the well location.

8.1. The signs shall warn of the presence of H_2S and shall prohibit approach to the well location when red flags are displayed.

8.2. Red flags shall be displayed when H_2S is present in concentrations greater than 20 ppm in air as measured on the equipment required under R649-3-12-6.

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H_2S when it is encountered.

10. A flare system shall be utilized to safely gather and burn H_2S bearing gas.

10.1. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes.

10.2. The outlets of all flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H_2S.

R649-3-13. Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3-7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards on the Surface.

1. All rubbish or debris that might constitute a fire hazard shall be removed to a distance of a least 100 feet from the well location, tanks, separator, or any structure. All waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the

well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

1. Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board.

2. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations.

3. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD.

1.1. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator.

1.2. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation.

1.3. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation.

1.4. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the real property records of the county where the well is located.

1.5. The surface owner shall be invited by the division to attend the predrill evaluation.

1.6. The surface owner's inability to attend the predrill evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations.

2.1. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil or gas.

1.1. The results of the test shall be reported in writing to the division within 15 days after completion of the test.

1.2. Additional tests shall be made as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool that contains both oil and gas.

4.1. The average daily oil production, the average daily gas production and the average GOR shall be recorded.

4.2. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test.

4.3. A GOR test of at least 24 hours duration shall satisfy the requirements of R649-3-19-1.

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order this test to be made.

5.1. All data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test.

5.2. The performance of a multipoint or other approved

test shall satisfy the requirements of R649-3-19-1.

6. All tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil and Gas Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by R649-3-19, the operator may vent or flare all produced oil well gas as needed for conducting the test.

1.2.1. The operator shall not vent or flare gas that is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by R649-3-19, the operator may vent or flare all produced gas well gas as needed for conducting the test.

2.2. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.3. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation.

3.1. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

3.2. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir.

4.3. The operator shall provide immediate notification to the division in all such cases in accordance with R649-3-32, Reporting of Undesirable Events.

4.4. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.5. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month.

4.6. The operator shall provide subsequent written notification to the division in all such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a Request for Agency Action to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance and/or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value.

9. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion and Filing of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed

with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of all drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under R649-2-12, Test and Surveys, the directional, deviation and/or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation and/or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data that presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval.

1.1. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of all wells on contiguous oil and gas leases or drilling units overlying the pool.

1.2. The application shall set forth all material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of all contiguous oil and gas leases or drilling units overlying the pool.

3.1. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing.

3.2. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102(7), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102(7) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other operations that do not involve changes to the wellbore configuration or the geologic interval(s) that it penetrates and that do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons.

7.3. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion that may qualify under Utah Code Ann. Section 59-5-102(7) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102(7).

10. The division is responsible for approval of workover and recompletion operations that qualify for the tax credit.

10.1. If the operator disagrees with the decision of the division, the decision may be appealed to the board.

10.2. Appeals of all other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging and Abandonment of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval.

1.1. The notice shall be submitted on Form DOGM-9, Sundry Notice and Report on Wells.

1.2. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

1.3. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon.

1.4. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information:

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another.

3.1. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.2. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.3. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.4. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.5. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.6. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.7. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.8. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging, required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced.

8.1. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all casing seats as well as all water strata and oil and gas shows.

8.2. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under R649-3-1, a $10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication.

1.1. Changes of plans or line locations may be implemented in an emergency situation without division approval.

1.2. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.3. The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.4. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.5. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.6. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

1.7. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the

conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, that may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture.

4.3. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart.

4.4. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with R649-3-26-4.6.

4.5. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry.

4.6. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level.

4.7. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil.

4.8. The permaplug shall be imprinted with an approved identification number or mark.

4.9. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the hole for settling allowance.

4.10. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies.

4.11. Unless severe weather conditions prevent access, the holes shall be cemented immediately.

4.12. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability.

4.13. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

4.14. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired.

4.15. No shothole shall be left unplugged for more than 30 days without approval of the division.

4.16. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover.

4.17. The hats shall be imprinted with the seismic contractor's name or initials.

4.18. Any slurry, drilling fluids, or cuttings that are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.19. Restoration plans required by the Mined Land Reclamation Act, Chapter 8 of Title 40, or by any other surface management agency will be accepted by the division.

4.20. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency.

4.21. All flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug all shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air that are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth.

5.4. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level.

5.5. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth.

5.6. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil.

5.7. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.8. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level.

5.9. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by R649-3-26-5.3.

5.10. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include: Certification by the seismic contractor that all shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with all rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of all mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of Forestry, Fire and State Lands, and School and Institutional Trust Lands Administration shall be signatory to the agreement, where applicable.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of all operators with respect to development of all minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, or an appropriate state or federal government agency, all wells shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging that comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone.

7.1. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well.

7.2. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at all times, including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under R649-3-4, to all potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10.After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to all coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude all oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Designated oil shale areas are subject to the general drilling, plugging and other performance standards described in

this section, except where the board has adopted, by order, specific standards for individual oil shale areas. As of June 8, 2001, the board has adopted specific standards for individual oil shale areas by board orders in Cause Nos. 190-5(b), 190-3, and 190-13. The board may adopt specific standards in other areas, or modify the above orders, in the future.

2. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

3. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 API No. 43-047-15382 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah. The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the well cited above.

4. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

5. On all wells that are intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

6.Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

7. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

8. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

9. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-8. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

10. In the event the casing is not cemented in accordance with R649-3-31-8, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

11. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

12. Upon written request of the owner or operator under R649-8-6, the division shall keep all well logs confidential. The division may inspect the drilling operations at all times, including any mining operations that may affect drilling or producing well bores.

13. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to all oil shale owners or their lessees whose interests are within a radius of 2,640 feet of the proposed well. The operator shall furnish a notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, to the owners or their lessees prior to commencement of plugging operations.

14. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Incident Reporting.

1. The division shall be notified of major and minor reportable events occurring at any oil or gas drilling, producing, transportation, gathering, or processing facility, or at any injection or disposal facility.

2. Major reportable events include the following:

2.1. Unauthorized release of more than 25 barrels of oil, salt water, oil field chemicals, or oil field wastes.

2.2. Unauthorized flaring, venting, or wasting of:

2.2.1. More than 500 Mcf of gas at any drilling or producing well site, or at any injection or disposal facility; or

2.2.2. More than 1500 Mcf of gas at any transportation, gathering, or processing facility.

2.3. Any fire that consumes the volumes of liquid or gas specified in R649-3-32-2.1 and R649-3-32-2.2.

2.4. Any spill, venting, or fire, regardless of the volume involved, that occurs in a sensitive area, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

2.5. Each accident that involves a fatal injury.

2.6. Each blowout, loss of control of a well.

2.7. Each release of gas containing 100 or more parts per million of hydrogen sulfide (H2S) that is not controlled.

3. Notification for all major reportable events will include:

3.1. A verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of a reportable event; and

3.2. A complete written report of the incident submitted on the Incident Report Form on the division website within five days following the conclusion of a reportable event.

4. Minor reportable events include the following:

4.1. Unauthorized release of more than five barrels and up to 25 barrels of oil, salt water, oil field chemicals, or oil field wastes.

4.2. Unauthorized flaring, venting or wasting of more than 50 Mcf and up to 500 Mcf of gas at any drilling or producing well site, or at any injection or disposal facility; or

4.3. Unauthorized venting or wasting of more than 50 Mcf and up to 1500 Mcf of gas at any transportation, gathering, or processing facility.

4.4. Any fire that consumes the volumes of liquid or gas specified in R649-3-32-4.1 and R649-3-32-4.2.

4.5. Each accident involving a major or life-threatening injury.

5. Notification for all minor reportable events will include a complete written report of the incident submitted on the Incident Report Form on the division website within five days following the conclusion of a reportable event.

6. Complete written reports of major and minor reportable

events shall include:

6.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the division.

6.2. The location where the incident occurred, described by section, township, range, and county.

6.3. The specific nature and cause of the incident.

6.4. A description of the resultant damage.

6.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.

6.6. An estimate of the volumes discharged and the volumes not recovered.

6.7. The cause of death if any fatal injuries occurred.

6.8. Other information as required by the division's Incident Report Form.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For all drilling activities proposed within the Great Salt Lake, the APD required by R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:

1.1. The name of the drilling contractor and the number and type of rig to be used.

1.2. An illustration of the boundaries of all state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.

1.3. An illustration of the locations of all evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.

1.4.An oil spill emergency contingency plan.

2. Unless permitted by the board after notice and hearing, no well shall be drilled that has a surface location:

2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.

2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.

2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.

2.4. Within any area south of the Salt Lake Base Meridian Line.

2.5. Within any area north of Township 10 North.

2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.

3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. All depths refer to true vertical depth:

3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.

3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.

3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.

3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that all hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.

3.5. Prior to drilling the plug after cementing, all casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. All casing pressure tests shall be recorded on the driller's log.

4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:

4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.

4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted.

4.2.1. Valves shall be maintained on the rig floor to fit all pipe in the drill string.

4.2.2. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure that exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at all times to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties. All blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the

conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at all times.

6. Mud testing equipment shall be maintained on the derrick floor at all times, and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of all oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances that may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or that in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. All spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of all circumstances, including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For all land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For all land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1. Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be assumed by the division until notified otherwise that surface use agreements remain in full force and effect until all the requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed all the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are

completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26.If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(5)(b), an operator must file an application with the division for designation of a wildcat well.

1.1. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log.

1.2. The application shall contain, where applicable, the following information:

1.2.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.2.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.2.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.2.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.2.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in R649-3-35-1 will be held confidential in accordance with R649-2-11 at the request of the operator.

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(5)(b).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed to the board. Appeals of all other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data, for showing the well has integrity, meaning that the casing, cement, equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

2. After review the Division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with R649-3-24, unless approval for extended shut-in time is given by the Division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the Division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the Division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102(7), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production that qualifies for a reduction in the severance tax rate under Subsection 59-5-102(7), the operator shall furnish the Division:

2.1.1. An extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project.

2.1.2. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the Board.

2.1.3. The projection shall be based on production history of all wells within the project area for not less than twelve (12) months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices.

2.1.4. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production that qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to all assumptions made in preparing the projection and any other information concerning the project that the division may

reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the Director or authorized agent. The Director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the Director or authorized agent's decision, the operator may request a hearing before the Board at its next regularly scheduled hearing. The Director or authorized agent may also refer the matter to the Board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the Director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

R649-3-38. Surface Owner Protection Act Provisions.

1. These rules and all subsequent revisions as approved by the board are developed pursuant to the requirements of the Surface Owner Protection Act of 2012 in Title 40, Chapter 6. It is the intent of the board and the division to encourage owners or operators and surface land owners to enter into surface use agreements. Surface use agreements should fairly consider the respective rights of the owner or operator and the surface land owner and also comply with the requirements of R649-3-34.

2. For the purposes of R649-3-38, these definitions are utilized.

2.1. "Crops" means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.

2.2. "Oil and gas operations" means to explore for, develop, or produce oil and gas.

2.3. "Surface land" means privately owned land overlying privately owned oil and gas resources, upon which oil and gas operations are conducted, and owned by a surface land owner.

2.4. "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located. Surface land owner does not include the surface land owner's lessee, renter, tenant, or other contractually related person.

2.5. "Surface land owner's property" means a surface land owner's surface land, crops on the surface land, and existing improvements on the surface land.

2.6. "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing the use and reclamation of surface land owned by the surface land owner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface land owner's crops on the surface land, loss of value of existing improvements owned by the surface land owner on the surface land, and permanent damage to the surface land.

3. Oil and gas operations shall be conducted in such manner as to prevent unreasonable loss of a surface land owner's crops on surface land, unreasonable loss of value of existing improvements owned by a surface land owner on surface land, and unreasonable permanent damage to surface land.

4. In accordance with Section 40-6-20, an owner or operator may enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations and use the surface land to the extent reasonably necessary to conduct oil and gas operations and consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.

4.1. Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall mitigate the effects of accessing the surface land owner's surface land, minimize interference with the surface land owner's use of the surface land owner's property, and compensate a surface land owner for unreasonable loss of a surface land owner's crops on the surface land, unreasonable loss of value to existing improvements owned by a surface land owner on the surface land, and unreasonable permanent damage to the surface land.

4.2. An owner or operator may but is not required to obtain location or spacing exceptions from the division or board or utilize directional or horizontal drilling techniques that are not technologically feasible, economically practicable, or reasonably available.

5. In accordance with Section 40-6-21, non-binding mediation may be requested by a surface land owner and an owner or operator, by providing written notice to the other party, if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface land owner on the surface land, or unreasonable permanent damage to the surface land.

5.1. A mediator may be mutually selected by a surface land owner and an owner or operator from a listing of qualified mediators maintained by the division and the Utah Department of Agriculture and Food, which includes the mediators identified on the Utah State Courts website with "property" or "real estate" as an area of expertise, or a mediator may be selected from any other source.

5.2. The surface land owner and the owner or operator shall equally share the cost of the mediator's services.

5.3. The mediation provisions of this subsection do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

6. A surface use bond shall be furnished to the division by the owner or operator, in accordance with the following provisions of Subsection R649-3-38-6.

6.1. A surface use bond does not apply to surface land where the surface land owner is a party to, or a successor of a party to:

6.1.1. A lease of the underlying privately owned oil and gas;

6.1.2. A surface use agreement applicable to the surface land owner's surface land; or

6.1.3. A contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.

6.2. The surface use bond shall be in the amount of $6,000 per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface land owner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

6.3. The surface use bond shall be furnished to the division on Form 4S after good faith negotiation and prior to the approval of the application for permit to drill. The mediation process identified in R649-3-38-5 may commence and is encouraged to be completed.

6.4. The division may accept a surface use bond in the form of a cash account as provided in R649-3-1-10.2.1 or a certificate of deposit as provided in R649-3-1-10.2.3. Interest will remain within the account.

6.5. The division may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage.

6.6. The surface use bond shall remain in effect by the operator until released by the division.

6.7. The surface use bond shall be payable to the division for the use and benefit of the surface land owner, subject to the provisions of these rules.

6.8. The surface use bond shall be released to the owner or operator after the division receives sufficient information that:

6.8.1. A surface use agreement or other contractual agreement has been reached;

6.8.2. Final resolution of the judicial appeal process for an action for unreasonable damages, as defined in R649-3-38-6.2, has occurred and have been paid; or

6.8.3. Plugging and abandonment of the well is completed.

6.9. The division shall make a reasonable effort to contact the surface land owner prior to the division's release of the surface use bond.

R649-3-39. Hydraulic Fracturing.

1. Chemical disclosure.

1.1. The amount and type of chemicals used in a hydraulic fracturing operation shall be reported to www.fracfocus.org within 60 days of hydraulic fracturing completion for public disclosure.

2. Wellbore integrity.

2.1. The operator shall comply with R649-3-8, Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

2.2. The operator shall comply with R649-3-9, Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

2.3. The operator shall comply with R649-3-13, Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3- 7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

2.4. The operator shall comply with R649-3-6, Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

2.5. The operator shall comply with R649-3-7, Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed

without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

2.6. The operator shall comply with R649-3-23, Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

3. Management of flowback water and surface protection.

3.1. The operator shall comply with R649-3-15, Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

3.2. The operator shall comply with R649-3-16, Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

3.3. The operator shall comply with R649-9-2, General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the Division to verify the status of the facility. The Division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes.

4.1. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change.

4.2. This plan will include the type and estimated annual volume of wastes that will be or have been generated.

4.3. The disposal facilities private or to be used for disposal,

4.4. The description of any waste reduction or minimization procedures.

4.5. Any onsite disposal/treatment methods or programs to be implemented by the operator.

3.4. The operator shall comply with R649-5-1, Requirements for Injection of Fluids Into Reservoirs.

1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily

limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

2.1. The name and address of the operator of the project.

2.2. A plat showing the area involved and identifying all wells, including all proposed injection wells, in the project area and within one-half mile radius of the project area.

2.3. A full description of the particular operation for which approval is requested.

2.4. A description of the pools from which the identified wells are producing or have produced.

2.5. The names, description and depth of the pool or pools to be affected.

2.6. A copy of a log of a representative well completed in the pool.

2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

2.8. A list of all operators or owners and surface owners within a one-half mile radius of the proposed project.

2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

2.10. Any additional information the board may determine is necessary to adequately review the petition.

3. Applications as required by R649-5-2 for injection wells that are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the requirements of R649-5-4.

3.5. The operator shall comply with R649-5-2, Requirements for Class II Injection Wells Including Water Disposal, Storage and Enhanced Recovery Wells.

1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

2.1. A plat showing the location of the injection well, all abandoned or active wells within a one- half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

2.7. Standard laboratory analyses of:

2.7.1. The fluid to be injected,

2.7.2. The fluid in the formation into which the fluid is being injected, and

2.7.3. The compatibility of the fluids.

2.8. The proposed average and maximum injection pressures.

2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter any fresh water strata.

2.10. Appropriate geological data on the injection interval with confining beds clearly labeled,

2.10.1. Nearby Underground Sources of Drinking Water, including the geologic formation name,

2.10.2. Lithologic descriptions, thicknesses, depths, water quality, and lateral extent;

2.10.3. Information relative to geologic structure near the proposed well that may effect the conveyance and/or storage of the injected fluids.

2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

2.12. An affidavit certifying that a copy of the application has been provided to all operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

3. Applications for injection wells that are within a recovery project area will be considered for approval:

3.1. Pursuant to R649-5-1-3.

3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to all Class II injection wells.

3.6. The operator shall comply with R649-5-3, Noticing and Approval of Injection Wells.

1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-1, shall be considered as a request for agency action by the Division and shall be published in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to all parties including government agencies. The notice of agency action shall contain at least the following information:

2.1. The applicant's name, business address, and telephone number.

2.2. The location of the proposed well.

2.3. A description of proposed operation.

3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice

and hearing by the board.

5. The director shall have the authority to grant an exception to the hearing requirements of R649-5- 1.1 for conversion to injection of additional wells that constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

3.7. The operator shall comply with R649-5-4, Aquifer Exemption.

1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

1.1. The aquifer does not currently serve as a source of drinking water.

1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

1.2.1. The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible.

1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

3.8. The operator shall comply with R649-5-5, Testing and Monitoring of Injection Wells.

1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, all injection wells shall be pressure tested or monitored as follows:

3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year.

3.5. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

3.9. The operator shall comply with R649-5-6, Duration of Approval for Injection Wells.

1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

2. An approval may be administratively amended if:

2.1. There is a substantial change of conditions in the injection well operation.

2.2. There are substantial changes to the information originally furnished.

2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

KEY: oil and gas law

November 1, 2016	**40-6-1 et seq.**
Notice of Continuation August 26, 2016	**40-6-5**
	40-6-20
	40-6-21

R655. Natural Resources, Water Rights.
R655-3. Reports of Water Rights Conveyance.
R655-3-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-1-10 and 73-2-1(4)(a) which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

APPURTENANCE - A right or improvement to a property that passes with the property upon the transfer of the property. As applied to water rights, it is as described in Utah Code Section 73-1-11.

APPROPRIATION - an application seeking to appropriate water pursuant to Utah Code Section 73-3-2.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the specific use(s) authorized under a water right expressed in terms of the purpose(s) to which the water may be applied and the quantity of that purpose. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated (e.g. 11.22 acres).

CHAIN OF TITLE - A series of deeds or other properly filed and recorded documents which demonstrate the transfer of a water right, a portion of a water right, or land with appurtenant water rights. Deeds establishing a chain of title begin with the owner listed on records of the Division of Water Rights as grantor of the first deed through a chronological succession of transfer documents where the right is ultimately conveyed to the grantee listed as new owner on the Report of Water Right Conveyance.

CHANGE APPLICATION - an application authorized to be made under Utah Code Section 73-3-3 to change the point of diversion, place of use, nature of use, period of use or storage of a water right.

CONFLICTED HOLDER - a person or entity claiming ownership of all or a portion of a water right that conflicts with the ownership claim of another person or entity claiming ownership of the same right or portion in question. Conflicted holders may also include title holders whose title is not directly disputed, but is the part-owner of a right where a title question exists, and to resolve the question, the State Engineer deems the holder should be involved.

DIVERSION LIMIT - the total volume of water in acre-feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to supply the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

EXCHANGE APPLICATION - as authorized under Utah Code Section 73-3-20, an application to allow water from one source to be exchanged for water from another source. Exchanges are conditional rights that do not modify the underlying rights (right on which the exchange is based). The water may be exchanged to the extent it is available and not used under the underlying right. For the purpose of updating title, an approved Exchange Application is appurtenant to land and transfers as other water right interests.

PLACE OF USE - the specific acreage where water under a water right may be placed to beneficial use as described on the records of the State Engineer or a decree.

PROFESSIONAL - for the purposes of this rule, a person authorized to submit a Report of Conveyance as specified in Utah Code Section 73-1-10. A professional must be licensed in Utah as an attorney, a professional engineer, a title insurance producer, or a professional land surveyor.

REPORT OF CONVEYANCE (ROC) - a report of water right conveyance to the state engineer as required by Section 73-1-10.

SHARE STATEMENT - A water right file created on state engineer records for purposes of administration in instances where the owner of shares of stock in a water company is authorized under statute to file an application (nonuse or change application) based on stock ownership. Water rights based on share statements are a conditional right. A water right change application based on shares of stock is appurtenant to the land where it is used and transfers as other interests in water rights. Shares of Stock do not transfer under rules of other rights to use water but transfer as securities as set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

SOLE SUPPLY - means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right is assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

SUPPLEMENTAL GROUP - Also referred to as a Water Use Group, means one or more water rights listed together and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use. The unique number referred to is shown on the Division's computer data base as Supplemental Group No.

WATER RIGHT NUMBER - a unique file number assigned by the Division beginning with a two digit prefix associated with a specific geographic area designated by the Division, followed by a dash followed by another number to establish a specific number for the administrative functions of the Division. (e.g. 43-3231)

WATER RIGHTS ADDENDUM - an addendum to a deed clarifying the water rights conveyed by the deed pursuant to Section 73-1-10(1)(d)(i) and 73-1-11(6). Addendums are recorded with the deed it accompanies at the County Recorder's Office and are forwarded by the County Recorder to the State Engineer pursuant to Utah Code Section 57-3-109.

R655-3-3. When a Water Rights Addendum Acts as a Report of Conveyance.

3.1 When a recorded Deed and water right or land addendum is transmitted to the State Engineer by a County Recorder, as required by Utah Code Section 57-3-109, the state engineer under Utah Code Section 73-1-10(1)(d)(ii) will process the Water Rights Addendum as though it were a submitted Report of Water Right Conveyance.

3.2 Water Right Addendums submitted in conformance with this rule shall be processed by the state engineer and ownership updated on water right records of the Division if:

3.2.1 The grantor listed on the deed and addendum is the owner as listed on water right records of the Division;

3.2.2 The Water Rights Addendum document is properly completed as instructed on the form; and

3.2.3 The addendum is signed by all grantors and grantees on the deed.

3.3 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Rights Addendum as described in this rule, the state engineer shall provide written notice to the grantee at the address stated on the addendum of the reasons ownership was not updated.

3.4 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Right Addendum as described in this rule, a water right owner shall submit a report of water right conveyance as directed in Utah Code Section 73-1-10(3) and these rules.

R655-3-4. Content of the Report of Conveyance.

4.1 A Report of Conveyance consists of:

4.1.1 A form provided by the state engineer which must be completed by the submitter;

4.1.2 Sufficient documentation presented as copies of

properly recorded or authenticated documents to demonstrate the Chain of Title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right; and

4.1.3 Maps conforming to Rule R655-3-5 when conveyance by Appurtenance to land is asserted in the report of conveyance.

4.1.4 Additional information in the form of affidavits, opinions, and explanations if deemed necessary by the state engineer to process the ROC.

4.1.5 A fee paid to the State Engineer to process the Report of Conveyance pursuant to Utah Code Section 73-2-14(1)(q).

4.2 The content of a Report of Conveyance form is as follows:

4.2.1 A single specified water right number to which the report pertains. The ownership record of the Division for this water right number is the only record which will be updated when the ROC is deemed acceptably complete.

4.2.2 A summary of the documents relied upon to establish a Chain of Title including:

4.2.2.1 The type of conveyance document;

4.2.2.2 Recording information on a deed including the date it was signed and recorded, and the Recorder's entry number;

4.2.2.3 The grantor name(s) as it appears on the conveyance document;

4.2.2.4 The grantee names exactly as they appear on the conveyance document;

4.2.2.5 Any reservations or special conditions of conveyance.

4.2.2.6 If a portion of the owner's interest in a water right is conveyed, the "Portion" Report of Conveyance form must be used which additionally requires:

4.2.2.6.1 The quantity of each beneficial use conveyed.

4.2.2.6.2 If applicable, the quantity of use on a change application that was conveyed.

4.2.2.6.3 The diversion limit if applicable.

4.2.3 The number of any change application to which the report also pertains.

4.2.4 The mailing address of all new owner(s) as identified in the Chain of Title as the mailing address is to be shown on records of the state engineer.

4.2.5 A signed certification of the owner if the ROC is submitted by an individual without a professional certification attesting that the information contained in the ROC is true and accurate.

4.2.6 A signed certification by a Professional unless submittal by a Professional is exempted in these rules. The certification shall state: "The professional was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Recorder records has been made and that the attached documents evidence the ownership interest of the grantee." The certification must include the professional's name, profession, license number, mailing address and phone number.

4.3 Copies of deeds submitted as supporting documentation must be properly recorded in the county where water is diverted and, if different, the county where the water is used. The recording information must appear on deeds submitted.

4.4 A water right deed conveys only the water right or portion thereof expressly identified in the deed.

4.5 A document relied upon by a County Recorder's office to maintain a tract index for land with an appurtenant water right will be accepted as a conveyance document consistent with Utah Code Section 73-1-11(1)(b). Documents submitted must include: a chain of title from the person identified on the State Engineer's records as owning the water right to the person shown on the County Recorder's records as owning the property to which the water right is appurtenant; a copy of the tract index from the County Recorder; and/or an affidavit endorsed by the Report of Conveyance professional affirming that the water right has not been severed from the land but remains appurtenant to the property.

4.6 If an interest in a water right has been segregated from another water right, a deed recorded subsequent to the segregation must show the currently assigned water right number for the segregated water right.

4.7 The document required to support the change of the name of a corporation is a certificate of name change, or other similar document, stamped by the Utah Department of Commerce, or by the appropriate agency in the State in which the corporation is incorporated, accompanying the Report of Conveyance.

4.8 A copy of a marriage license evidences the change of name of an individual specified in the license.

4.9 A copy of a decree of a court of competent jurisdiction evidences the change of name of an individual as declared in the decree.

4.10 A copy of a death certificate evidences the dissolution of joint tenancy in favor of the surviving party (removal of a joint tenant as an owner on Division records).

4.11 A properly executed affidavit by an individual evidences aliases by which the individual may be named in other documents.

4.12 In the case of poor copies, improved copies may be requested.

4.13 Supporting documents must be arranged in ascending chronological order (oldest to youngest) by recording date.

R655-3-5. Maps and Mapping Standards for Reports of Conveyance.

5.1 Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

5.2 Maps shall meet the following standards:

5.2.1 Maps must be legible.

5.2.2 Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.

5.2.3 Maps are to state the water right number conveyed.

5.2.4 Maps are to include a north arrow.

5.2.5 Maps are to be drawn to scale with a graphical scale bar contained thereon.

5.2.6 Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.

5.2.7 At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.

5.2.8 Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.

5.2.9 Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.

5.2.10 Maps are to show any reservations from the property including property described by language such as "less and excepting" in the overall property description.

5.2.11 Each deed submitted must have a map accompanying it unless the property description in every deed is identical.

5.2.12 Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

5.3 The accuracy and completeness of maps are the

responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

R655-3-6. Procedures for Processing a Report of Conveyance.

6.1 Upon receipt of a Report of Conveyance, the state engineer shall assess if the Report of Conveyance is acceptably completed in form and substance.

6.2 If a Report of Conveyance is acceptably complete, it will be processed and Division records updated to reflect ownership of the water right in accordance with the Report. Written notice will be sent to the new owner identified in the Report of Conveyance.

6.3 If a Report of Conveyance is not acceptably complete, the ROC will be returned to the submitting party with an explanation of why it is not considered acceptably complete.

6.4 If the fee for the ROC has been processed by the state engineer prior to the return of a ROC to the submitting party, the state engineer will place a copy of the ROC on the water right file but will not update ownership records until the ROC is acceptably complete.

The submitting party will be allowed 90 days to return a corrected or completed ROC for processing without further fee.

6.5 The accuracy and completeness of the Report is the sole responsibility of the submitter.

6.6 A Report of Conveyance which conflicts with another Report on the same water right will not be processed and will be returned to the submitter. Its receipt will be noted on records of the state engineer and the disputing parties notified. The state engineer will take no further administrative action on a water right which is the subject of a conflict until the conflict is resolved.

6.6.1 Conflicted Holders may resolve the title conflict by filing documents that resolve the title question with the State Engineer. To be evaluated, any documents submitted, including court orders, must first be filed with the applicable county recorder where the water right is diverted and used. Any resolution document, agreement or order between the Conflicted Holders must directly address the title conflict of record rather than appeal to state engineer discretion in resolving the matter.

6.6.2 Nothing in this Section 6.6 shall be construed to create a title conflict where a deed with precedence over subsequent deeds relied upon in a chain of title used to update state engineer records is submitted in a Report of Conveyance. However, the deed holder assumes ownership of the water right on state engineer records subject to all administrative actions which have occurred at the time the ROC is submitted and individual ROCs must be filed for each segregated portion of the water right affected by the conveyance documents.

R655-3-7. When a Water Right Owner Is Authorized to Prepare a Report of Conveyance Without a Professional.

7.1 A Report of Conveyance may be submitted by the owner of a water right without the certification of a professional only in the following situations:

7.1.1 When the deed or deeds convey 100% of a water right and state the water right number on the deed.

7.1.2 When the deed or deeds convey an owner's interest in a portion of a water right, all owners of that interest of the right shall sign the deed as grantors, the deed conveys the portion by stating the water right number on the deed, and the sole supply has been established for the portion conveyed.

7.1.3 When the Report of Conveyance is submitted to change the name of an owner but does not report the conveyance of an interest in the water right to a new party.

7.1.4 When the Report of Conveyance is submitted to remove the name of a joint tenant due to death.

KEY: conveyances, ownership, titles, water rights
October 12, 2016 73-1
Notice of Continuation August 1, 2014 73-2-1(4)(a)

R655. Natural Resources, Water Rights.
R655-17. Water Use Data Reporting and Verification.
R655-17-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-2-1(5)(b), 73-5-4, and 73-5-8 which provides that the Division of Water Rights shall adopt rules that specify what water use data a person shall report and how the Division of Water Rights shall validate data submitted.

R655-17-2. Definitions.

"Certified Operator" means a person who operates, repairs, maintains, and is directly employed by or an appointed volunteer for a public drinking water system that is certified under Rule R309-300.

"Professional Engineer" is a professional engineer, licensed in Utah, retained to operate, repair, and maintain a public drinking water system.

"Public Water Supplier" is a system that meets the criteria under section 19-4-102(7) of the Utah Code.

"Telemetry" is an automated communications process by which measurements or data are collected at one location and transmitted electronically to receiving equipment for monitoring.

"Water Use Data Form" is the title of the report sent to water users annually requesting water use data.

"Water User" is an individual or group using water from any river system or water source in the State.

R655-17-3. Annual Water Use Report Collection.

3.1 Annually the Utah Division of Water Rights may request a Public Water Supplier or a Water User report to the Division:

3.1.1 the nature of any water use;

3.1.2 the area on which water was used;

3.1.3 the quantity of water diverted;

3.1.4 the quantity of water used;

3.1.5 the number of connections to which water is provided;

3.1.6 all water sources including water purchased from other systems;

3.1.7 the quantity of water wholesaled; and

3.1.8 water elevations on wells or tunnels.

3.2 The Utah Division of Water Rights shall send a request (Utah Water Use Data Form) for data the following calendar year of the water use either by mail or electronically.

3.3 The Water User shall return the Utah Water Use Data Form to the State within the timeframe stated upon the request, which shall not be less than 30 days.

3.4 If the Water User is a Public Water Supplier then the Certified Operator of Professional Engineer shall sign and provide their certification or license number attesting to the accuracy of the data reported on the Utah Water Use Data Form.

R655-17-4. Annual Water Use Report Validation.

4.1 The Utah Division of Water Rights may validate the data reported on the Utah Water Use Data Form by making further inquiries or conducting a site visit.

4.2 Utah Division of Water Rights staff may require systems to make the controlling works, measuring devices, points of diversions, and distribution facilities accessible for inspection.

4.3 If a Public Water Supplier does not return the Water Use Data Form or knowingly reports inaccurate data the system will be reported to the Division of Drinking Water.

R655-17-5. Other Data Requests.

5.1 Every person using water from any river system or water source, when requested by the Utah Division of Water Rights at any time, shall within 30 days after such request report to the state engineer in writing:

5.1.1 the nature of any water use;

5.1.2 the area on which water is being used;

5.1.3 the source and quantity of all water diverted; and

5.1.4 water elevations on wells or tunnels.

5.2 To facilitate the collection of water use data, the state engineer may require a water user install telemetry equipment on any measurement required under 73-5-4 in circumstances where conflicts among water users has been demonstrated.

5.3 The State Engineer shall approve:

5.3.1 the design of the telemetry equipment; and

5.2.2 the method for reporting the data to the State Engineer.

5.4 If a water user refuses or neglects to install or maintain telemetry equipment or refuses or neglects to report the measurements or data to the State Engineer, the State Engineer may:

5.4.1 forbid the use of water until the user complies with the State Engineer's requirements; and

5.4.2 commence enforcement proceedings authorized by Section 73-2-25.

KEY: water use, reporting, verification
October 12, 2016 **73-2-1(5)(b)**
73-5-4
73-5-8

R661. Navajo Trust Fund, Trustees.
R661-7. Utah Navajo Trust Fund Housing Projects Policy.
R661-7-101. Requesting UNTF Housing Assistance.

(1) Individuals requesting UNTF housing assistance must apply to their respective Chapter and follow the Chapter's procedures for application, required documents, and prioritization. All requests, budget preparation, updates and progress reports will be processed initially through the Chapter.

(a) The requesting Chapter or organization has the primary responsibility to identify clients most in need of housing assistance and shall provide written confirmation that the applicant has not received funding to construct a new home from UNTF, Navajo Royalties Holding Fund, other housing agencies or funding source within the past 20 years.

(b) Chapters are required to maintain housing assistance policies and procedures and submit a copy of the policy to UNTF once every three (3) years, and when updated or amended.

(i) The Chapter policy should include a prioritization system in accordance with the Navajo Housing Services Department numbering system. If not already provided for in the Navajo Housing Services Department numbering system, disabled, elderly and veteran applicants shall be considered first on the housing priority assistance list.

(ii) The Chapter shall have a housing application review committee.

(c) The Chapter must submit an approved resolution along with the Housing priority list that supports the request.

(d) Applicants must meet UNTF residency criteria.

R661-7-201. Types of Housing Assistance.

(1) New House construction from footing to exterior and interior finish.

(2) Completion of construction on houses that were started but not completed.

(3) Additions of a room(s) such as a bedroom, bathroom, or kitchen.

(4) Remodel or Renovation includes:

(a) Renovation or retrofit to accommodate clients for handicapped accessibility, including but not limited to, additions/expansion for large bathrooms, walk-in, roll-in showers, widening of hallways and doorways, expansion of stoop or deck size, exterior ramps leading up to doorways.

(b) Improvement of an existing structure such as roof repair, floor installation or replacement.

(c) Weatherization measures, including replacement of broken windows or dilapidated doors, and installation of draft-proof windows, sealant, caulking, weather stripping, etc.

(d) Renovation of trailers or modular/manufactured homes, including the stabilization of the foundation with appropriate skirting and/or masonry foundation.

(e) Installation of house wiring, indoor plumbing, plumbing fixtures, kitchen cabinetry.

(f) Financial assistance for housing located off reservation land in San Juan County, Utah, is limited to renovation. The applicant must provide proof of ownership of the property.

R661-7-301. Housing Assistance Not Available.

(1) To fund the purchase of trailers or modular/manufactured housing units.

(2) For down payment assistance or closing costs are not eligible for UNTF funding.

(3) For mortgage funding or payoff

(4) For any type of loan payoffs.

(5) For purchase of appliances such as a refrigerator, range, or microwave oven.

R661-7-401. Housing Assistance Eligible Purchases.

(1) Water heaters if waterline is available and water is about to be turned on or, if the water heater is electric, electricity is functional.

(2) Wood and/or coal stove, stove pad, stove pipe, and through the roof stove pipe kit.

(3) One ceiling fan for distribution of heat.

(4) UNTF staff will determine if the materials proposed to be purchased are reasonably priced quality building materials.

(a) A client who desires a more expensive item than what is approved by UNTF staff must purchase that item using their own funds. UNTF will not pay client the difference between the UNTF staff approved item and the item client desires to purchase.

(b) If the client does not purchase the item in time for construction crew installation the client must install the item at their own cost.

R661-7-501. Required Documentation for Housing Projects.

(1) A Navajo Nation Homesite Lease will be required of all new house construction and construction completion projects.

(2) For other types of Housing Assistance applicants are strongly encouraged to have a homesite lease available for proof of ownership, utilities and other services.

(3) Matching fund agencies shall be identified and commitment letters from each agency shall be included in the proposal package.

(4) Applicants must provide documentation naming a successor owner/lessee who is permitted to occupy the residence and is obligated to maintain the property.

(5) All new construction must be based on a floor plan showing all components of the dwelling unit to be constructed. Additionally, a specific list of all materials to be used and an estimate of total man-hours for construction is required.

(6) Proof of the applicants contribution towards the construction, addition, or renovation of a dwelling in the form of receipts for the purchase of cement as well as proof of purchase of adequate waterproof material for protection from moisture damage to the bags of cement purchased.

R661-7-601. Purchases Shall Be Made on Separate Invoices for Separate Applicants.

Building materials shall not be purchased and delivered at commencement of construction.

(1) Purchases and deliveries of materials shall be completed in phases according to the following schedule.

Phase 1: Foundation materials for footing, stem wall, piers, rebar, anchor bolts, and redwood or treated lumber

Phase 2: House Shell materials for framing, trusses, OSB plywood, siding, roofing, vents

Phase 3: Exterior Doors and Windows

Phase 4: Rough-in House wiring and Plumbing

Phase 5: Insulation and Drywall

Phase 6: Flooring

Phase 7: Finish Carpentry: Cabinets, Casing and Baseboard, Exterior trim, Soffit, Interior and Exterior Painting

Phase 8: Finish House wiring and Plumbing

(2) Purchases for Stoops, Steps, or Decks can be performed at any point after Phase 1.

(3) All documentation must be submitted to the Chapter

(a) Requests for payment must include all materials receipts as well as verification signed by the homeowner, chapter representative, or UNTF representative picking up the items or signing for the delivery.

(b) The person signing the receipt shall deliver the receipt to the Chapter and/or UNTF office and shall safeguard materials from theft or damage.

(c) Upon receipt of material verification forms by the UNTF Administration, invoices will be processed for payment directly to the vendor.

R661-7-701. Funding.

(1) UNTF preference is to fund projects on a reimbursement basis. However, in exceptional circumstances the UNTF Administrator has the authority to make advance disbursements up to Five Thousand Dollars ($5,000.00) for mobilization expenses.

(2) UNTF will disburse approved funding directly to Chapters, or identified and approved contractors and/or vendors.

(3) The Chapter or UNTF will retain ten percent (10%) of the approved contractor billings until proof of completion of the housing project is provided to UNTF.

(4) The Chapter shall provide UNTF staff with an annual report identifying percentage of project completion and an explanation of what remains to be completed.

R661-7-801. Resale Approval Required.

Housing built, or appliances purchased, using UNTF funding shall not be sold without prior UNTF approval.

KEY: housing, chapter, Utah Navajo Trust Fund (UNTF), eligible purchases
October 24, 2016 51-10

R671. Pardons (Board of), Administration.
R671-201. Original Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

(1)(a) Within six months of an offender's commitment to prison the Board shall give notice of the month and year in which the inmate's original hearing will be conducted.

(b) A minimum of seven days prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, any attempt, conspiracy or solicitation to commit any of these offenses, and any other offense, regardless of title, description or severity, when it is known at the time of sentencing that the offense conduct resulted in the death of any person.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) All homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing.

(b) The Board shall determine, by majority vote, the month and year of an original hearing for an offender serving a homicide offense commitment.

(c) In setting an original hearing for a homicide offense commitment, the Board shall only consider information available to the court or offender at the time of sentencing.

(d) Homicide offense commitments not eligible for parole, including sentences of life without parole or death, may not be scheduled for original hearings.

(e) If the offender is less than 18 years of age at the time of the homicide offense and the offense is eligible for parole, the original hearing shall be scheduled no later than 15 years after the date of sentencing.

(4) If the offender is less than 18 years of age at the time of commitment and the offense is eligible for parole, the case shall be routed to the Board as soon as practicable for the determination, by majority vote, of the month and year for an original hearing.

(5) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for first degree felony commitments when the most severe sentence imposed and being served is a sentence greater than 15 years to life, excluding enhancements.

(b) After the service of seven years for first degree felony commitments when the most severe sentence imposed and being served is a sentence of 10 years to life, or 15 years to life, excluding enhancements.

(c) After the service of three years for all other first degree felony commitments.

(d) After the service of twelve months if the most serious offense of incarceration is: (i) a second degree felony sexual offense commitment; or (ii) a first degree felony which is three to life.

(e) After the service of six months for all other second degree felony commitments.

(f) After the service of six months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for all other third degree felony and class A misdemeanor commitments.

(6)(a) An offender may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule. An offender's request shall specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion.

(b) The Board may, in its discretion, depart from the schedule as provided by this rule if:

(i) an offender requests a continuance due to extraordinary circumstances;

(ii) an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled;

(iii) a Class A misdemeanor commitment has expired prior to an original hearing; or

(iv) the Board determines that other unusual or extraordinary circumstances impact the setting of an original hearing.

KEY: parole, inmates, hearings
October 31, 2016 Art. VII Sec. 12
Notice of Continuation September 22, 2014 77-27-5
77-27-7
77-27-9

R671. Pardons (Board of), Administration.
R671-204. Hearing Continuances.
R671-204-1. Permissible Hearing Continuances.

Board hearings may be continued:

(1) to inquire into, investigate, assess, or respond to any issue associated with a:

(a) possible lack of competency of the offender, pursuant to Utah Code Ann. Sections 77-15-2, 77-15-3 or Utah Admin. Rule R671-206; or

(b) mentally ill offender whose mental health has deteriorated to a point where the offender has been transferred to the state hospital, or whose mental illness renders the offender unable to attend, understand, or appropriately participate in a hearing, pursuant to Utah Code Ann. Sections 62A-15-605, 62A-15-605.5, 77-16a-204, Utah R. Admin. P. R207-1, R207-2 or R671-207;

(2) when the offender is not available for the hearing due to medical or mental health reasons;

(3) to allow an offender who has been determined by the Board to be unable to effectively represent themselves to obtain assistance at the hearing, pursuant to Utah R. Admin. P. R671-308;

(4) to allow for the personal appearance of the offender if the offender is unable to appear at the hearing as scheduled;

(5) upon the request of a victim of record who desires to participate in the hearing, pursuant to Utah R. Admin. P. R671-203, but who cannot reasonably attend the hearing as scheduled;

(6) to await the adjudication or resolution of new or additional criminal charges;

(7) to conduct a parole violation evidentiary hearing, pursuant to Utah R. Admin. P. R671-517;

(8) at the motion or request of the offender or an attorney representing the offender, with a written waiver and stipulation for the continuance, and a minimum notice to the Board of 3 business days;

(9) when the Board determines that new, additional, critical, or material information necessary for a full, fair, accurate, and complete hearing has not been received and will not be received by the scheduled hearing; or

(10) when the Board finds that a continuance is in the interest of justice, procedural economy, or is necessary because of transportation, technical, security, or other issues beyond the control of the Board.

R671-204-2. Limitations.

(1) Staff may not reschedule or continue original hearings, rescission hearings, or rehearings beyond 90 days unless a majority of the Board concurs with the continuance.

(2) No hearing may be continued beyond an offender's sentence expiration date.

KEY: continuances, hearings, parole
October 31, 2016

Art. VII, Sec. 12
63G-3-201(3)
77-27-5
77-27-7
77-27-9

R671. Pardons (Board of), Administration.
R671-302. News Media and Public Access to Hearings.
R671-302-1. Open Hearings.

According to state law and subject to fairness and security requirements, Board hearings shall be open to the public, including representatives of the news media. However, the Board shall only accept testimony or comments from the offender and specific individuals as provided in R671-203 and R671-308.

R671-302-2. Limited Seating.

When the number of people wishing to attend a hearing exceeds the seating capacity of the room in which the hearing will be conducted, priority for admission and seating shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender.
5. Officials designated or approved by the Board.
6. Up to five members of the news media as allocated by the Board or its designee.
7. Members of the public and media on a first come basis.

R671-302-3. Security and Conduct.

All attendees are subject to prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. All persons granted admission to a hearing must have a picture identification and subject themselves to the security regulations of the custodial facility.

R671-302-4. Executive Session.

Board executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

R671-302-5. News Media Equipment.

(a) Subject to prior approval by the Board or its designee, news agency representatives will be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

(b) When it is determined by the Board or its designee, that any such equipment or operators of that equipment are causing a disturbance, are interfering with, or have the potential to cause a disturbance or interfere with an orderly, fair and impartial hearing, restrictions may be imposed to eliminate those problems.

(c) Any instant uploading of images recorded at the site of a hearing, or while a hearing is in progress, must be approved by the Board or its designee in advance of the hearing.

Photographing, recording and/or transmitting the image of a victim testifying before the Board is prohibited unless approved by the victim and the individual presiding over the hearing.

R671-302-6. Prior Approval.

News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.

R671-302-7. Approving Equipment.

(a) Requests to use photographic, recording or transmitting equipment, must be made at least forty-eight (48) hours prior to a regularly scheduled hearing and ninety-six (96) hours prior to a Commutation Hearing.

(b) It is the responsibility of the news agency, or their representative, making the request to contact and confer with the Board's designee in order to work out logistical, access and all other details of such use.

(c) If the Board's designee is unfamiliar with the equipment proposed to be used, he or she may require that a demonstration be performed to determine if it is likely to be intrude, disturb or inhibit the orderly, fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.

(d) Digital cameras and recording equipment are approved equipment.

(e) If equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designee. Any approved equipment will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.

(f) No artificial lighting may be used during a hearing, or in the hearing room, in conjunction with the use of any photographic, recording or transmitting equipment.

(g) If there are multiple requests for the same type of equipment, news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached regarding pooling arrangements, the Board, or its designee, will make the determination and assignment. Any news agency or representative so designated and assigned as the pool representative shall promptly provide all photographs, recordings or footage to all other media agencies and personnel who are deemed a part of the pool.

R671-302-8. Reserved Media Seating.

(a) If five or fewer requests for media seating are received prior to the deadline, all requests will be approved. If more than five requests for media seating are received, the Board's designee will allocate the seating based on a pool arrangement. Each media category will select its own representative(s). If no agreement can be reached regarding pool representative(s), the Board's designee will make the determination and assignment. Any person wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

(b) One seat will be allocated to each of the following media categories:

1. Local daily newspapers with statewide circulation;
2. Major wire services with local bureaus;
3. Local television stations with regularly scheduled daily newscasts;
4. Local radio stations with regularly scheduled daily newscasts;
5. Web-based media.
6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).
7. If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

R671-302-9. Violations.

Any news agency found to be in violation of this policy

may have its representatives restricted in or banned from covering future Board hearings.

KEY: news agencies
October 31, 2016 63G-3-201(3)
Notice of Continuation January 31, 2012 77-27-1 et seq.
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Board or a Hearing Official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender Legal Counsel -- Parole Revocation Hearings.

(a) The Board may appoint or assign an attorney to represent offenders at parole violation hearings, including evidentiary hearings, at State expense, unless the offender is the subject of a new criminal conviction for which an initial or original hearing is scheduled.

(b) An offender may choose instead to be represented by their own attorney during parole revocation hearings at the offender's own expense.

(c) Any attorney appearing or representing an offender in parole revocation hearings shall be admitted and licensed to practice law within the state of Utah, as defined by Utah Code Ann. Section 78A-9-103 (1953, as amended) and must comply with the Board's Administrative Rules, including Rule R671-103, Attorneys.

R671-308-3. Offender Legal Counsel -- All Other Hearings.

(a) Except in parole revocation hearings as set forth in this rule, an offender or petitioner has no right, requirement, or entitlement to legal representation or appointed counsel before the Board or during or in connection with any Board hearing, review, or decision.

(b) No attorney or other person appointed or employed by an offender to assist in any matter or hearing before the Board may testify, speak, or otherwise address the Board during a hearing except as provided in this rule. Only the offender, a person appointed by the Board to assist an offender pursuant to this rule, or a victim as provided for by Utah law may present testimony or comment during a hearing.

(c) If a pardon or commutation petitioner appoints or employs an attorney at their own expense, to appear or represent the petitioner before the Board, the Board may allow the attorney to participate at the pardon or commutation hearing. Any attorney appearing or representing a petitioner at a commutation or pardon hearing must meet the requirements of Subsection R671-308-2(c) and must comply with the Board's Administrative Rules.

KEY: parole, inmates
October 31, 2016 **77-27-5**
Notice of Continuation January 31, 2012 **77-27-9**
77-27-11
77-27-29
78A-9-103

R671. Pardons (Board of), Administration.
R671-510. Evidence for Issuance of Warrants.
R671-510-1. Evidence for Issuance of Warrants.

(1) Board Warrants shall be issued only upon a showing that there is probable cause to believe that a parole violation has occurred.

(2) A certified Warrant Request shall be submitted by the parole agent setting forth facts that establish probable cause to believe that the parolee committed specific parole violations. All facts supporting probable cause shall be contained in the body of the warrant request, as supplementary reports or information may not be considered.

(3) Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return the parolee to custody.

R671-510-2. Warrant Request.

(1) Warrant requests shall include:

(a) the name of the parolee, offender number, and date of birth;

(b) the nature of the allegations that justify possible revocation of parole;

(c) the elements substantiating probable cause for each allegation which should include who did what, when, and where;

(d) the condition of the parole agreement that the parolee is alleged to have violated, along with the date and location where the violation occurred;

(e) the legible name, signature, and telephone number of the parole officer and supervisor; and

(f) under separate or additional cover, contact information and phone numbers for the reporting agent.

R671-510-3. Parole Information.

(1) The agent shall, on a form approved by the Board, provide the Board with the following information:

(a) the parolee's risk/need assessment level at the time of the current violation and a summary of the areas of concern;

(b) the number of prior paroles;

(c) the parolee's parole violation history;

(d) the parolee's custody status;

(e) financial obligation details regarding the parolee;

(f) the parolee's address or living arrangements;

(g) the parolee's treatment summary;

(h) the results of any drug or alcohol tests;

(i) any new referred offenses or new criminal charges;

(j) any aggravating factors concerning the parolee;

(k) any mitigating factors concerning the parolee; and

(l) a summary of the parolee's current parole performance.

R671-510-4. Update Information.

(1) Once the parolee is detained on a Board warrant, the agent shall track the case and keep the Board informed of any changes in status or circumstance of the allegations or parolee.

(2) No less than seven days prior to the hearing, the agent shall send the Board all updated information and any amended allegations and recommendations. The agent shall provide the offender with a copy of the updated information no less than seven days prior to the hearing.

(3) At its discretion, the Board may dismiss the allegations if the updated information is not received in a timely manner.

KEY: warrants, parole, probable cause
October 31, 2016 77-27-11
Notice of Continuation February 15, 2013

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-15, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2017 edition of the National Electrical Safety Code, C2-2017, as promulgated by the Institute of Electrical and Electronics Engineers, which is incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-100-3(H), Consumer Complaints, Practice and Procedure Governing Formal Hearings.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2014 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2014, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical

energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2011 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2011, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and
8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric safety codes, electric utility industries

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	54-4-8
	54-4-14
	54-4-23

R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.
R746-343-1. Purpose and Authority.

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.

A. Definitions

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.

A. Approved Application--

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.

A. Distribution Centers shall:

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a criminal activity as defined by Utah or federal law.

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.

R746-343-16. New Technology Equipment Distribution Program (NTEDP).

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, severely hearing-impaired, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2018.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) severe hearing impairment; or

(C) severe speech impairment;

(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited as follows:

(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:

(A) no more than 8 deaf individuals who are at least 13 years old;

(B) no more than 8 severely hearing-impaired individuals who are at least 13 years old;

(C) no more than 8 severely speech-impaired individuals who are at least 13 years old; and

(D) at least one deaf, severely hearing-impaired, or severely speech-impaired individual who is under 13 years of age.

(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

(A) software and hardware failures; and

(B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: assistive devices and technology, speech/hearing impairments, surcharges, telecommunications
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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the

following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

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.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, the following Affordable Base Rate for basic telecommunications service:

a. As of July 1, 2016, $18 per line; and

b. As of July 1, 2017, $20 per line.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy

model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: affordable base rate, public utilities, telecommunications, universal service fund
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R850. School and Institutional Trust Lands, Administration.
R850-8. Adjudicative Proceedings.
R850-8-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-204(3), 53C-1-204(10)(c), and Section 53C-1-304.

R850-8-200. Scope.

This rule governs adjudicative proceedings conducted by the School and Institutional Trust Lands Administration Board of Trustees or any hearing examiner designated by the board, and judicial review of all such proceedings.

R850-8-300. Definitions.

1. Adjudicative proceeding - means a review by the board of a final agency action that directly determines the legal rights, duties, or other legal interests of one or more identifiable persons.

2. Board - means School and Institutional Trust Lands Administration Board of Trustees. References to the board shall also apply to any hearing examiner appointed unless the context of rules requires otherwise.

3. Director's Minutes - means the weekly compendium of actions taken by the director and posted on the agency's website to provide public notice for record-keeping purposes.

4. Final agency action - means a written determination by the Trust Lands Administration of the legal rights, duties, or other legal interests of one or more identifiable persons. The determination may be in any form deemed appropriate by the Trust Lands Administration including, but not limited to, a notation on the Director's Minutes, a narrative record of decision, a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), or a decision letter. Decisions by the director or the agency to sell, exchange, or lease specific real property are not subject to administrative review pursuant to Subsection 53C-1-304(2)(b), and therefore do not constitute final agency actions.

5. Party - means the Trust Lands Administration or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or Trust Lands Administration rule to participate as parties in an adjudicative proceeding.

6. Person - means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

7. Petitioner - means a person who requests the initiation of any proceeding.

8. Respondent - means a person against whom an adjudicative proceeding is initiated, or whose property interest is directly affected by a proceeding initiated by the board or by another person.

R850-8-400. Liberal Construction.

This rule will be liberally construed to secure just, speedy, and economical determination of issues presented to the board.

R850-8-500. Deviation from Rules.

The board, in its sole discretion, may permit a deviation from this rule for good cause including, but not limited to, situations where compliance is impractical or unnecessary, or in the furtherance of due process or the statutory obligations of the board.

R850-8-600. Appearances and Representations.

1. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the board.

2. Attorneys.

Except as provided in R850-8-600(1), representation at hearings before the board will be by attorneys licensed to practice law in the state of Utah, or in the discretion of the board, attorneys licensed to practice law in another jurisdiction.

R850-8-700. Conferences Encouraged.

This rule does not preclude the Trust Lands Administration or the board at any time from holding conferences with parties and interested persons to encourage settlement, clarify the issues, simplify the evidence, facilitate discovery in formal adjudicative proceedings, or otherwise expedite the proceedings.

R850-8-800. Filing of Pleadings.

An original and ten copies of all documents, including any exhibits, required or permitted to be filed, shall be filed at the office of the director. The director shall not accept less than the required number of copies. Each party filing documents with the director shall send one copy by first class mail to each other party to the proceeding.

R850-8-900. Final Agency Action.

1. The final agency action shall be in writing. Except for a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), the final agency action shall be signed by the director or his designee.

2. Nothing in this rule 850-8 shall require the agency to mail notice of routine administrative and record-keeping matters otherwise noted on the Director's Minutes to any person including, without limitation, assignments, reinstatements, notifications of the expiration of any lease or instrument by its own terms, cancellations of instruments for nonpayment after a notice of cancellation issued pursuant to R850-5-200(5), voluntary relinquishments or amendments, approvals of range improvements or grazing permit renewals, or fee waivers.

3. Final agency actions requiring the payment of funds; providing notice pursuant to R850-5-200(5) that an instrument will be subject to cancellation unless payment of funds is made; exercising any discretionary right of the agency to readjust or otherwise modify an existing agreement; declaring any default under an existing agreement; declining or conditioning any assignment; making rule-based determinations where administrative review is provided by rule; or otherwise directly determining the legal rights or obligations of a person will be mailed to that person and any other person with a right to notice by statute, rule or contract.

R850-8-1000. Appeal of Final Agency Action.

1. The Trust Lands Administration may by rule specifically designate certain categories of Trust Lands Administration actions that are not subject to appeal.

2. Except where no appeal is available pursuant to statute or rule, an appeal may be initiated only by a party to a contract that is the subject of a final agency action, or whose legal interests are directly determined by the final agency action. A written petition must be filed within 14 days of the mailing date of the final agency action requesting an adjudicative proceeding, unless a longer date is specified in writing in the final agency action or required by statute, rule, or contract. In the event an appeal is not filed in the applicable time period, the final Trust Lands Administration action shall become unappealable. The petition for an adjudicative proceeding shall be filed according to the following requirements:

(a) the petition shall be filed at the office of the director pursuant to R850-8-800.

(b) the petition shall state:

i) all facts upon which the petition is based;

ii) any statute, rule, contract provision, or board policy

which the final agency action is alleged to violate;

iii) the nature of the violation of the final agency action with the statute, rule, contractual provision or board policy, and the injury that is specific to the petitioner arising from the final agency action. If the injury identified by the petition is not peculiar to the petitioner as a result of the action, the board will decline to hear the appeal; and

iv) the relief requested.

3. Upon receipt of a petition, the director shall initially stay any further actions with respect to the matter for which the adjudicative proceeding is being sought by the petitioner. The board, in its discretion, may lift such suspension or condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

4. Upon receipt the director shall promptly mail the petition to the board.

5. When the date of mailing is at least ten days prior to a regularly scheduled board meeting, the board may consider the petition at that meeting. In the event that the date of mailing is within ten days of a regularly scheduled board meeting, the petition will be considered at the next succeeding board meeting.

6. In its initial consideration of any petition, the board may schedule the petition for hearing at a future date, make determinations concerning whether the adjudicative proceeding will be formal or informal, address procedural matters such as stays, discovery, etc., or hear the matter on the merits.

7. The board may decline to conduct adjudicative proceedings in response to a petition, in which case the petitioner shall be entitled to judicial review pursuant to Section 63G-4-402.

R850-8-1100. Designation of Adjudicative Proceedings as Formal or Informal.

1. The board, in its discretion, shall determine whether to conduct an adjudicative proceeding formally or informally.

2. Any time before a final order is issued in any adjudicative proceeding, the board may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding does not unfairly prejudice the rights of any party.

R850-8-1200. Procedures for Informal Adjudicative Proceedings.

1. The Trust Lands Administration may, but is not required, to file an answer or other pleading responsive to the allegations contained in the petition.

2. The parties to the proceeding shall be permitted to testify, present evidence, and comment on the issues.

3. Hearings will be held only after timely notice to all parties.

4. Discovery is prohibited, but, the board may issue subpoenas or other orders to compel production of necessary evidence.

5. All parties shall have access to information contained in the Trust Lands Administration's files and to all materials and information gathered in any investigation, to the extent permitted by law.

6. Intervention shall be in accordance with R850-8-1400.

7. All hearings shall be open to all parties.

8. Within a reasonable time after the close of an informal adjudicative proceeding, the board shall issue a signed order in writing that states the following:

(a) the decision, and when appropriate, the reasons for the decision;

(b) a notice of any right of judicial review available to the parties;

(c) the time limits for filing an appeal.

9. A copy of the board's order shall be promptly mailed to each of the parties.

10. Recordation of Hearing.

(a) The board may record or have a transcript prepared of any hearing.

(b) Any party, at its own expense may record or have a reporter approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

R850-8-1300. Procedures for Formal Adjudicative Proceedings.

1. An original and ten copies of all papers permitted or required to be filed shall be filed with the Trust Lands Administration and one copy shall be sent by mail to each party.

2. In addition to the final agency action, and the petition for the appeal of the final agency action, additional motions may be submitted for the board's decision on either written or oral argument and the filing of affidavits in support or contravention may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

3. The board may permit or require pleadings in addition to the final agency action and the appeal of the final agency action.

4. Upon motion of a party, and for good cause shown, the board may authorize discovery against another party, including the Trust Lands Administration, in the manner provided by the Utah Rules of Civil Procedure.

5. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the board when requested by any party, or may be issued upon its own motion.

6. Hearing procedure.

(a) The board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On its own motion or upon objection by a party, the board:

i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

ii) shall exclude evidence privileged in the courts of Utah;

iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the board, and of technical or scientific facts within the board's specialized knowledge.

(c) The board may not exclude evidence solely because it is hearsay.

(d) The board shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The board may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(g) The hearing shall be recorded at the board's expense.

(h) Any party, at his own expense, may have a person approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(j) This section does not preclude the presiding officer

from taking appropriate measures necessary to preserve the integrity of the hearing.

7. Intervention shall be in accordance with R850-8-1400.

8. Orders.

(a) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the board, the board shall sign and issue an order that includes:

i) a statement of the board's findings of fact based exclusively on the evidence of record in the adjudicative proceedings, or on facts officially noted;

ii) a statement of the board's conclusions of law;

iii) a statement of the reasons for the board's decision;

iv) a statement of any relief ordered by the board;

v) a notice of any right to judicial review of the order available to aggrieved parties;

vi) the time limits applicable to any review (or reconsideration).

(b) The board may use its experience, technical competence, and specialized knowledge to evaluate the evidence.

(c) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under Utah Rules of Evidence.

(d) This section does not preclude the board from issuing interim orders to:

i) notify the parties of further hearings;

ii) notify the parties of provisional rulings on a portion of the issues presented; or

iii) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

R850-8-1400. Informal or Formal Adjudicative Proceedings - Intervention.

1. Any person not a party may file a signed, written petition to intervene in an adjudicative proceeding with the Trust Lands Administration.

2. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(a) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(b) a statement of the relief that the petitioner seeks from the Trust Lands Administration.

3. The board shall grant a petition for intervention if it determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing intervention.

4.

(a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) the board may impose the conditions at any time after the intervention.

R850-8-1500. Formal Adjudicative Proceeding - Designation of Hearing Examiner.

1. The board may in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusion of law to the board. Any member of the board, or any person designated by the board may serve as a hearing examiner, other than an employee of the Trust Lands Administration.

2. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues: to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiners's authority is limited the hearing examiner will be vested general authority to conduct hearings in an orderly and judicial matter, including authority to:

(a) summon and subpoena witnesses;

(b) administer oaths, call and question witnesses;

(c) require the production of records, books and documents;

(d) take such other action in connection with the hearing as may be prescribed by the board.

(e) make evidentiary rulings and propose findings of fact and conclusions of law.

3. Conduct of hearings.

Except as limited by the board's order, hearings will be conducted under the same rules and in the same manner as hearings before the board.

4. Rulings, Findings, and Conclusions of the hearing examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R850-8-1300(8). All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the board.

R850-8-1600. Default.

1. The board may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding: or

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after being given proper notice.

2. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.

(a) A defaulted party may seek to have the Trust Lands Administration set aside the default order, and any order in the adjudicative order, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default and any subsequent order shall be made to the board.

4.

(a) In an adjudicative proceeding that has other parties besides the party in default, the board shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default.

R850-8-1700. Reconsideration and Modification of Existing Orders.

1. Any person affected by a final order or decision of the board may file a petition for reconsideration within 20 days after the date the order was issued.

2. A copy of the request for reconsideration shall be sent

by mail to each party by the person making the request.

3. The petition for reconsideration will set forth specifically the particulars in which it is claimed the board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.

4. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition with the director at any time prior to the hearing at which the petition will be considered by the board. Such responses will be served on the petitioner at or before the hearing.

5. The board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the board within such time, the petition will be deemed to be denied. The board may set a time for a hearing on said petition or may summarily grant or deny the petition.

6. The filing of the request is not a prerequisite for seeking judicial review of the order.

R850-8-1800. Judicial Review - Exhaustion of Administrative Remedies.

1. A party aggrieved may obtain judicial review of a final order issued in an adjudicative proceeding, except where judicial review is expressly prohibited by statute.

2. A party may seek judicial review only after exhausting all administrative remedies available, except that a party seeking judicial review need not exhaust administrative remedies if any statute or rule states that exhaustion is not required.

3.

(a) A party shall file a petition for judicial review of a final order issued by the board within 30 days after the date that the order is issued or considered issued.

(b) The petition shall name the Trust Lands Administration and all other appropriate parties as respondents.

R850-8-1900. Judicial Review.

To seek judicial review of a final board action resulting from informal or formal adjudicative proceedings, the petitioner shall file a petition for review of a board order with the appropriate court in the manner required by Sections 63G-4-402 and 63G-4-403, as appropriate.

R850-8-2000. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

1. The board may grant a stay of its order or other temporary remedy during the pendency of judicial review if it determines a stay would be in the interest of justice and would not unduly harm the beneficiaries. The board, in its discretion, may condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

2. If the board denies a stay or denies other temporary remedies requested by a party, the board's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

R850-8-2100. Emergency Adjudicative Proceedings.

1. The board may issue an order on an emergency basis without complying with the requirements of this section if:

(a) the facts known by the board or presented to the board show that an immediate and significant danger to the public health, safety, or welfare exists; or

(b) an immediate and irreparable threat to the beneficiaries exists; and

(c) the threat requires immediate action by the board.

2. In issuing its emergency order, the board shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare; or

(b) the immediate and irreparable threat to the beneficiaries; and

(c) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(d) give immediate notice to the persons who are required to comply with the order.

3. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the board shall commence an adjudicative proceeding in accordance with the other provisions of this section.

R850-8-2200. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the board.

R850-8-2300. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R850-8-2400. Time Periods.

Nothing in this section shall be interpreted to restrict the director, or, the board from lengthening or shortening any time period prescribed herein.

KEY: administrative procedures, public petitions, right of petition, adjudicative proceedings
December 22, 2011 53C-1-204(3)
Notice of Continuation October 18, 2016 53C-1-204(10)(c)
53C-1-304

R907. Transportation, Administration.
R907-3. Administrative Procedure.
R907-3-1. Additional Requirements: Policy.

The Utah Department of Transportation and Transportation Commission shall make available for public inspection, in its office, all its final written orders, decisions, opinions, and statements of general applicability adopted or used.

KEY: administrative procedures
1987 63G-4-102
Notice of Continuation October 7, 2016

R907. Transportation, Administration.
R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.
R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.

(1) 23 U.S.C. 112 requires States to use the relevant parts of the Federal Acquisition Regulations (FAR), contained in 48 CFR Chapter 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

(2) Consequently, the Department adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in Federal-Aid transportation projects.

(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Department also adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in most state-financed transportation projects.

R907-66-2. Financial Screening.

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

R907-66-3. Contract Negotiations.

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

R907-66-4. Award of Contracts.

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

R907-66-5. Small Purchase Cap.

To be consistent between federal-aid projects and state-financed projects, UDOT adopts the federal small purchase cap or simplified acquisition threshold established in 48 CFR 2.101, which is currently $150,000.

R907-66-6. Execution of Contracts.

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

KEY: transportation, contracts
December 8, 2011 63G-6-105
Notice of Continuation October 7, 2016 72-1-201

R914. Transportation, Operations, Aeronautics.
R914-1. Rules and Regulations.
R914-1-1. Purpose and Authority.

The purpose of this rule is to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish minimum standards for operational safety as authorized and required by Section 72-10-103.

R914-1-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Transportation;

(2) "FAA" means the Federal Aviation Administration; and

(3) Division means the Aeronautical Operations Division.

R914-1-3. Establishment and Location of Navigational Aids.

Procedure.

(1) Location site is selected.

(2) Site is surveyed for location and elevation.

(3) Selected site is submitted to the FAA for approval.

(4) Upon receiving FAA approval, navigational aid may be installed.

(5) After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-4. Operational Safety.

In order to enhance the safety of aircraft operations and protect people and property, the Department imposes the following operational safety rules.

(1) All pilots operating aircraft in the State of Utah will comply with applicable Federal Aviation Regulations.

(2) Obstruction to flight. Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

(3) Determination of obstruction. When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Department.

KEY: air traffic, aviation safety, airports, airspace
October 12, 2016 72-10-103
Notice of Continuation October 1, 2012 72-10-116

R916. Transportation, Operations, Construction.
R916-7. Appeals to UDOT Decisions on, and Requesting Compliance with Nighttime Noise Permits.
R916-7-1. Purpose.

The purpose of this rule is to establish a procedure for a local jurisdictional authority or local government to appeal the decision of the Department of Transportation to conduct highway construction at night on roads where the normal posted speed limit is less than 55 miles per hour.

R916-7-2. Authority.

This rule is required by Utah Code Subsection 72-6-112.5(6) and is enacted under the authority of Utah Code Subsection 72-1-201 (h).

R916-7-3. Appealing Decisions of the Department.

1. A local jurisdictional authority may appeal the Department's decision to conduct highway work at night by filing a written appeal with the Department within 10 days of receiving a written notice of the Department's decision to perform work at night.

2. The Department's Director for the Region in which the night work is to be performed will respond to the local jurisdictional authority's appeal in writing within 5 days of receiving the appeal, and may conduct an informal hearing prior to responding to the appeal.

3. If the Department's Region Director denies the appeal, the local jurisdictional authority may appeal the Region Director's decision of the to the Department's Executive Director, in writing, within 10 days of the date of receiving the Region Director's denial.

4. The Executive Director will respond in writing to an appeal within 5 days of receiving the appeal.

5. The decision of the Executive Director shall be administratively final.

R916-7-4. Requests to Enforce Terms of a Noise Permit.

1. A local jurisdictional authority may request that the Department enforce the terms of a noise permit by submitting a written request to the Region Director.

2. After review and upon receiving a written request from a local jurisdictional authority that the conditions for the noise exemption permit are not being met, the department shall initiate corrective action within 24 hours to ensure nighttime highway construction activities meet requirements of the local permit.

KEY: appeals, noise permits, procedures, compliance
October 24, 2016 72-6-112.5

R918. Transportation, Operations, Maintenance.
R918-5. Construction or Improvement of Highway.
R918-5-1. Authority.

This rule is required by Section 72-6-107 of the Transportation Code and is promulgated pursuant to Section 63G-3-301 of the Utah Administrative Rulemaking Act and Section 72-1-201.

R918-5-2. Purpose and Background.

Section 72-6-107 requires that any construction or improvement project whose estimated cost for labor and materials exceeds the Bid Limit defined in Section 72-6-109 shall be performed under contract awarded to the lowest responsible bidder. Construction or improvement projects with estimated costs for labor and materials lower than that Bid Limit may be performed by force account. That same section also directs the Department to establish a procedure whereby evidence that a region violated that law may be heard, and also directs the Department to establish sanctions for a region found to be in violation. This rule establishes those procedures and sanctions.

R918-5-3. Definitions.

(1) "Bid Limit" is the dollar amount set forth in Section 72-6-109.

(2) "Department" or "UDOT" means the Utah Department of Transportation.

(3) "Region" means one of the four regions of the Utah Department of Transportation.

(4) "Project" means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one road, within a half-mile proximity and occurs within the same calendar year.

R918-5-4. Process to Hear Evidence of Violations.

(1) There is established within the Department a "Bid Limit Hearing Board" (the Board), consisting of persons in the following positions:

(a) Director of Operations (Chair);

(b) Engineer for Construction;

(c) Engineer for Maintenance;

(d) Director of Project Development;

(e) UDOT Internal Auditor;

(f) One UDOT Region Director (appointed by the Deputy Director on a case-by-case basis); and

(g) Deputy Engineer for Maintenance (Secretary/Recorder, non-voting).

(2) Any person, corporation, government agency, or UDOT group, having reasonable evidence that a region violated any provision of Section 72-6-107, may request that the Board be convened to hear that evidence, by submitting a written request or complaint to the Department's Deputy Director.

(3) Upon receiving a complaint of an alleged violation, the Deputy Director shall direct the Board to convene by notifying the Chair that a complaint has been received.

(4) The Board shall convene no later than 30 days after the Deputy Director receives the complaint.

(5) During the hearing, the complainant shall present objective evidence that the estimated cost of the project for labor and materials exceeded the Bid Limit. The evidence shall include credible cost data to support the allegation. The accused region shall be afforded the opportunity to defend itself against any and all allegations by presenting credible evidence of its own.

(6) Having heard evidence from both parties, the Board shall privately deliberate on the evidence heard and return a decision either supporting the complainant's claim of a violation, or finding the claim unsubstantiated. The board's decision shall be based on a simple majority vote of the board. The Board shall then notify the Deputy Director of its decision and recommendation for sanction if appropriate.

(7) Upon receiving the Board's decision, the Deputy Director shall either dismiss an unsubstantiated claim or administer an appropriate sanction against the region in violation. The Deputy Director has discretion to administer either the standard sanction outlined in Section R918-5-5, or other appropriate corrective action.

R918-5-5. Standard Sanction for Violation.

The standard sanction for a region found in violation of the provisions of Section 72-6-107 by exceeding the Bid Limit for labor and materials, is a penalty to be taken from that region's operations budget (commonly known as the "Code 1" budget), and distributed equally among the other three regions. The standard amount of the penalty is the larger of: (1) the total cost of the project for labor and materials, less the Bid Limit in effect at the time the project began, or (2) $100,000.

KEY: maintenance, construction, improvement projects, bid limits
October 24, 2016 **72-6-109**
72-6-107

R926. Transportation, Program Development.
R926-3. Class B and Class C Road Funds.
R926-3-1. Authority.

Utah Code Ann. Sections 72-2-109, 72-3-103, and 72-3-104 authorize the Utah Department of Transportation and city and county officials to mutually adopt rules governing the expenditure of class B and class C road funds.

R926-3-2. Purpose.

The following rules are to govern the expenditure of class B and C road funds as mutually agreed upon by the City and County Joint Highway Committee and the Utah Department of Transportation.

R926-3-3. Incorporation of B and C Regulations by Reference.

The Department incorporates by reference the latest UDOT publication "Regulations Governing Class B and Class C Road Funds" dated September 11, 2015. This may be found on website http://www.udot.utah.gov.

R926-3-4. Authorized Use of Funds, Cooperative Agreements.

Nothing in this rule shall limit the authority of a recipient of class B or class C funds to expend those funds by cooperative agreement on any class B or class C road or use authorized in the regulations referenced in rule R926-3-3.

KEY: transportation policy, highway finances, highway, roads
October 12, 2016 72-2-107 through 72-2-110
Notice of Continuation September 8, 2016

R926. Transportation, Program Development.
R926-5. State Park Access Highways Improvement Program.
R926-5-1. Authority and Purpose.

Utah Code Ann. Section 72-3-207 authorizes the Utah Department of Transportation to administer this program and to establish procedures for a County, City, or Town to apply for a grant of program monies.

R926-5-2. Definitions.

(1) Class B and C Roads: As defined in Utah Code Ann. Sections 72-3-103 and 72-3-104.

(2) State Park Access Roads: As defined in Title 72, Chapter 3, Part 2, Transportation Code.

(3) Construction: As defined in Utah Code Ann. Section 72-6-109.

(4) Maintenance: As defined in Section 72-6-109.

(5) Project: As defined in Section 72-6-109.

(6) Commission: The Utah Transportation Commission.

(7) UDOT: The Utah Department of Transportation.

(8) Joint Highway Committee: An advisory body of fifteen officials each from the Utah League of Cities and Towns, and the Utah Association of Counties.

(9) Local Authority: A county or incorporated city or town in Utah.

R926-5-3. Eligibility.

(1) State Park Access Highways that are also Class B and C Roads are eligible.

(2) This program is for Construction Projects. Maintenance Projects are not eligible.

(3) Administrative and indirect costs are not eligible.

R926-5-4. Rules.

The State Park Access Highways Improvement Program is administered under all State Statutes. The following rules also apply.

(1) The Commission sets priorities for program monies.

(2) The Commission uses the Joint Highway Committee to help in the project selection process.

(3) Projects are selected annually unless an emergency arises.

(4) Local Authorities shall follow the procedures of Section 72-6-107.

(5) The Local Authority provides at least 50% of the cost of each project in matching funds.

(6) The Local Authority agrees to use the funds within three years. The local authority repays all unused funds to UDOT.

(7) The Local Authority certifies completion of the project and compliance with these rules to UDOT.

R926-5-5. Procedures and Responsibilities.

(1) Local Authorities submit a grant application to the Joint Highway Committee. The application includes a concept report describing the location, scope of work, project limits, and cost estimate.

(2) The Joint Highway Committee prioritizes grant requests considering the following factors:

a. Highway usage.

b. Physical condition of the road as determined by a Road Surface Management System.

c. Ability of local authority to maintain and preserve the highway, and

d. Capital and operation improvement plans of the Utah Division of Parks and Recreation.

(3) The Joint Highway Committee recommends up to three years of projects for Commission approval.

(4) The Commission reviews the Joint Highway Committee recommendations, makes adjustments if necessary, and approves a list of projects.

(5) UDOT executes an agreement with the Local Authority and grants funds for each approved project. The awarding of grants is subject to availability of funding.

(6) Local Authority completes the construction project.

(7) Local Authority submits certification of compliance and completion to UDOT.

KEY: state parks, transportation, highway finance*
April 14, 1997 72-3-207
Notice of Continuation October 25, 2016

R926. Transportation, Program Development.
R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.
R926-14-1. Purpose.

The purpose of this rule is to establish the following:

(1) administration of the Utah Scenic Byway program;

(2) the criteria that a highway shall possess to be considered for designation as a state scenic byway;

(3) the process for nominating a highway to be designated as a state scenic byway;

(4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;

(5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and

(6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of corridor, and related notifications.

R926-14-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 52, Chapter 4; Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-14-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in Title 74, Chapter 4 and does not refer to any local scenic byway committee herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means removing a current state scenic byway designation by the committee from an entire existing scenic byway.

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means selection of a roadway by the committee as a state scenic byway or selection of an existing state scenic byway by the U.S. Secretary of Transportation as one of America's Byways.

(8) "Federal policies" means those rules outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.

(10) "GOED" means the Utah Governor's Office of Economic Development.

(11) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(12) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(13) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(14) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(15) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(16) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(17) "State Scenic Byway" means a Utah roadway corridor that has been duly designated by the committee for its intrinsic qualities.

(18) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to:

(a) designating, de-designating, hearing appeals of segmentation denials of state scenic byways, and consideration of segmentation under a Request for Agency Action;

(b) recommending considerations for National and All-American Road recognition to the Legislature;

(c) recommending applications to the NSBP;

(d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

(e) other business as may be needed to administer the scenic byway program.

(3) The committee shall meet to conduct business necessary to administer the state scenic byway program.

(a) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by Title 52, Chapter 4, individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection.

(b) All additional meetings called by the chair, including committee meetings to consider factors associated with a Request for Agency Action to segment property adjacent to a scenic byway, may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by Title 52, Chapter 4.

(i) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection (depending on the technology used), but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

(ii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for all participants and the technology used is generally publicly available.

(iii) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(iv) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during a web conference may be taken continuously via a chat window, then read by the moderator during the time set aside for public input, with committee responding. In a teleconference, public participants may be requested to hold their comments until a designated period is opened by the chair.

R926-14-5. Criteria Required of a Highway to Be Considered for Designation as a State Scenic Byway.

(1) A road being considered for state scenic byway designation must meet all of the following criteria:

(a) the nominated road must possess at least two unusual, exceptional, or distinctive intrinsic qualities, as defined;

(b) the nominated road may be either a planned or existing route and in the case of a planned route, legal public access, safety standards and all-weather pavement must be guaranteed at completion of construction;

(c) roadway safety on the nominated road must be evaluated against and guided by American Association of State Highway and Transportation Officials (AASHTO) safety standards for federal aid primary or secondary roads;

(d) the nominated road must have strong local support for byway designation and the proponents must demonstrate this support and coordination;

(e) the nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles;

(f) the nominated road need not lead to or provide connection to other road networks; it may be dead-ended, or provide only a single outlet for traffic;

(g) the nominated road need not be open during the winter months, but seasonal road closures must be clearly posted, shown on applicable maps, and specified in any promotional literature; and

(h) the nominated road may include portions of the Interstate Highway System, but only if the Interstate component is a small part of the mileage of the overall nominated scenic byway and is included primarily for continuity of travel.

(2) It is the intent of these criteria to be restrictive in nature so as to limit the number of designated state scenic byways in order to maintain the quality and integrity of the scenic byway system.

R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local legislative body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the responsible organization has held public hearings and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the byway within the limits of their community have the statutory right, as prescribed in Title 72, Chapter 4, to opt out of any new byway designation through official segmentation action of their local legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6) Upon approval by the committee of a scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule 926-13 to include the description of the byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new byway in online maps, brochures, or other publications of the NSBP. The department will add the scenic byway to the official highway map at its next printing.

R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.

In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

(1) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

(2) Local scenic byway committees desiring national designation are required by the National Scenic Byways Program to prepare nomination applications, adhering to the criteria outlined in applicable federal policies.

(a) A corridor management plan for the byway will be required by the NSBP to be prepared before a nomination application will be considered. The required information and criteria to be included in the corridor management plan are outlined in the federal policies.

(b) The NSBP will issue a call for applications, at which time the local scenic byway committee may submit a nomination application as long as the state scenic byway has been approved for consideration in accordance with the requirements of Title 72, Chapter 4.

(3) Local scenic byway committees are to confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review prior to submitting to the NSBP.

(4) The committee will refer all considerations for America's Byways designations to the Legislature for approval, along with the recommendation of the committee. As required in Title 72, Chapter 4, Legislative approval must be obtained

before any application for nomination may be submitted to the NSBP.

(5) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of any differences in alignment or limits as related to existing state scenic byway designations.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(6) On receiving notification of a change in byway status to National Scenic Byway or All-American Road, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System (NHS) are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an NHS route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and NHS status, since de-designation or segmentation would not affect the ongoing applicability of NHS regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) Segmentation of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7) Alternately, segmentation of specific parcels of property adjacent to a scenic byway may be requested by the property owner by submitting a written Request for Agency Action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2.

(a) The Request for Agency Action shall contain the information required by 63G-4-201(3)(a), and shall include a statement why the owner considers the property to be non-scenic as defined in 72-4-301.

(b) The written Request for Agency Action shall be mailed to the Office of Tourism, Film and Global Branding within the GOED, with a copy of the request mailed to the Program Development Group within the Utah Department of Transportation to the attention of Program Development.

(c) Segmentation of property under a Request for Agency Action shall take effect 60 days after receipt of the written request by the Office of Tourism within GOED, unless the committee demonstrates to an administrative law judge within 60 days, with subsequent action by the administrative law judge, that the property fails to meet the definition of "non-scenic" as defined in 72-4-301;

(i) Pursuant to Section 72-4-303(3)(d), "receipt" of the request for Agency Action shall be the date on which the mailed copy of the request is received by GOED's Office of Tourism.

(ii) Requests for Agency Action shall be mailed to:

GOED OFFICE OF TOURISM
Attention: Scenic Byway Committee
300 North State Street
Council Hall/ Capitol Hill
Salt Lake City Utah 84114

(iii) A copy of the Request for Agency Action shall be mailed to:

Program Development Group of the
Utah Department of Transportation
P.O. Box 143600
4501 South 2700 West
Salt Lake City Utah 84114

(d) A request for agency action segmentation is classified as an informal adjudicative proceeding.

(8) Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include, but are not limited to:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(9) Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include, but are not limited to those identified in R926-14-8(7)(a) through (e).

(10) Parcels on existing byways may not be segmented out of a byway solely for the purpose of evading state and federal regulations pertaining to byway designation, but must also be considered non-scenic or otherwise meet the criteria listed in Paragraph (7). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in Title 72, Chapter 4.

(11) State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

(12) Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

(13) The local legislative body shall provide the committee the following information at the next committee meeting:

(a) the date of segmentation, being the day the local legislative body took action on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from the public meeting(s); and

(d) a copy of the signed resolution from the local legislative body.

(14) After the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(15) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation. The committee will then forward the result of the vote to the requesting local legislative body or appealing party. For segmentation denial appeals heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(16) Upon approval or disapproval of a de-designation or segmentation request or decision on appeal, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.

(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(c) In the case of a local legislative action on a segmentation request, the local legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local legislative body, the date of approval by the local legislative body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(17) Appeals to the committee concerning local legislative actions are handled as provided in Title 72, Chapter 4.

(18) Upon receiving notification of segmentation or de-designation, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes. The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP. The department will also show substantive changes on the official highway map at its next printing.

R926-14-9. Local Government Consent.

Consent of affected local governments along the byway corridor is required by Title 72, Chapter 4 for any change in scenic byway status.

R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.

(1) Whenever changes to the scenic byway status of a corridor or of a segment thereof are considered, one or more public hearings must be held for the purpose of receiving the public's views and to respond to questions and concerns expressed before action is taken.

(2) Upon the receipt of a Request for Agency Action from a property owner to segment property adjacent to a scenic byway, the Chair of the committee shall call a meeting for the committee to consider factors associated with the request, including consideration of information listed in paragraph (4).

(3) For all other changes to scenic byway status:

(a) The organization initiating the request for change in status is responsible for arrangement, notification, and execution of the hearing(s). The responsible organization may be:

(i) an organization (local scenic byway committee, community, county or association of governments) submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) a local legislative body considering a segmentation request.

(b) The hearing(s) shall be held in the area affected by the proposed status changes.

(c) Multiple hearings in varied locations may be appropriate, based on the length of the corridor or the affected area within the corridor. The committee chair will review and approve the number and locations of hearings as proposed by the nominating organization to ensure collection of a broad base of public comments throughout the length of the corridor where the scenic byway status changes are proposed.

(d) The responsible organization shall invite the state committee and the local scenic byway committee to attend the public hearing(s).

(4) The required public hearing(s) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body.

(5) Notification of all public hearings shall be made as required by the laws governing the responsible organization.

(6) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

(a) the impact on outdoor advertising;

(b) the potential impact of traffic volumes;

(c) the potential impact of land use along the byway;

(d) the potential impact on grant eligibility; and

(e) the potential impact on the local tourist industry.

(7) The responsible organization shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

R926-14-11. Requirements for Consideration of Adjudicative Proceedings Associated with a Segmentation Request Submitted by a Property Owner Under a Request for Agency Action.

(1) If the committee determines at a public hearing that property associated with a property owner's request for agency action to segment property does not meet the definition of non-scenic as defined in 72-4-301, the Chair of the committee shall notify the property owner that its Request for Agency Action is denied pending administrative hearing.

(2) The Chair of the committee shall notify the property owner in writing of:

(a) The committee's denial of the Request for Agency Action;

(b) the Committee's intent to have the matter considered by an administrative law judge;

(c) a list of available administrative law judges, if known.

(3) No more than 10 days after the written notice is sent advising the property owner of the committee's denial of the request for agency action and intent to have the matter considered by an administrative law judge, the property owner shall notify the committee in writing of their agreement on selection of the administrative law judge named by the

committee, or advise the committee of an alternate judge agreed upon by the committee.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

KEY: transportation, scenic byways, highways

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	72-4-301
	72-4-301.5
	72-4-302
	72-4-303
	72-4-304

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-1. Purpose and Authority.

The purpose of this rule is to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved. This rule is authorized by the grant of rulemaking authority found in Section 72-6-111. This rule is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise and Construction Noise, 23 CFR 772 (April 1, 2011), which is hereby adopted and incorporated by reference.

R930-3-2. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which substantially changes the alignment or increases the number of through-traffic lanes or the addition of auxiliary lanes or interchange ramps.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "Type III Project" means a project that does not meet the classification of a Type I project or a Type II project. Type III projects do not require a noise analysis.

(6) "UDOT" means Utah Department of Transportation.

(7) "FHWA" means Federal Highway Administration.

(8) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(9) "Leq" means the equivalent (average) sound level reported in units of dBA.

(10) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-3. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have a formal building permit before the issuance of the final environmental decision document to be considered for noise abatement.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

R930-3-4. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) The design noise level is greater than or equal to the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category; or

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.

R930-3-5. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-6. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists;

(2) At least eight dBA of noise reduction must be achievable at impacted receptors nearest the highway; and

(3) Noise abatement measures must be cost effective.

(a) For residential areas (Category B, Table 1), Cost effectiveness is based on the cost of abatement divided by the number of benefited receptors. Benefited receptors must be considered in determining a noise barrier's cost per receptor regardless of whether or not they were identified as impacted. A benefited receptor is any impacted or non-impacted receptor that gets a noise reduction of 8 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement is listed in the Noise Abatement Procedures. This cost may be periodically reviewed by the Department for reasonableness and updated, as needed.

(b) For non-residential areas (Category A, C, D or E, Table 1): Cost effectiveness depends on the height of noise wall required and corresponding length of frontage. In any case, a reasonable cost for noise abatement will not exceed the cost effectiveness criteria listed in the Noise Abatement Procedures section of the UDOT Noise Policy.

R930-3-7. Declaration of Intent.

Environmental study documents will indicate those areas where noise impacts are projected and areas where abatement appears reasonable and feasible. A final decision on the installation of abatement measures will be made after completing final design and the balloting process.

R930-3-8. Public Involvement.

(1) As part of the final design phase of projects, the Department needs to establish whether property owners and residents are in favor of noise abatement measures. This process involves sending ballots to the following groups so they can indicate their preference for or against noise abatement measures:

(a) All benefited receptors (property owners and residents/renters). A benefited receptor is one that would receive a reduction of 8 dBA or more as a result of noise abatement; and

(b) Receptors that border and are directly adjacent to the end of a proposed noise wall that are not, by definition, benefited by the wall.

(2) The number of votes is established as follows:

(a) Owner occupied residences: The owner will have 1 vote.

(b) Rental homes, multi-family residences and apartments: The owner will have 1 vote per unit and the resident/renter will have 1 vote for the unit.

(c) Day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures: The owner will have 1 vote.

(d) Commercial/industrial businesses: The owner will have 1 vote for the unit and, if applicable, the tenant will have 1 vote for the unit.

(e) Mobile home parks: The mobile home owner will have 1 vote. The lot owner, if different than the home owner, will have 1 vote.

(3) Assessing ballots - When votes are counted, property owners'votes will receive a multiplier factor of 5 compared to residents (non-owners) factor of 1.

(a) Noise abatement will only be recommended if 75% of votes counted, favor noise abatement. The denominator used to calculate this percentage will equal the total number of votes. In addition, at least 50% of the total number of completed

ballots must be returned to adequately assess if noise abatement measures are desired. If less than 50 percent of ballots are returned after balloting efforts are completed, then noise abatement measures will be deemed not reasonable.

(b) Ballots sent by mail are deemed by the Department as "due diligence" in notifying the affected property owners and residents/renters of possible noise mitigation measures in their area. Ballots will be sent by regular mail to each property owner of record and each residing household/resident. Each ballot will include a deadline for return to the Department. For ballots sent but not received by the deadline, a second ballot will be sent by Registered Mail to those who have not returned a ballot.

(c) If the voting process results in a decision not to construct noise abatement, the area will not be considered for noise abatement unless a future transportation project falls under the guidelines of a Type I Project.

R930-3-9. Coordination with Local Officials.

For Type I Projects, the Department will inform local officials of noise compatible planning concepts and an estimate of future noise levels on undeveloped lands or properties within the project limits.

R930-3-10. Local Government Participation.

In instances where noise abatement has already been deemed feasible and reasonable, a third party such as a local municipality, may contribute funds to make functional or aesthetic enhancements to a noise abatement feature.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this rule will be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

TABLE 1- UDOT Noise Abatement Criteria (NAC)
(Hourly A- Weighted Sound Level decibels (dB(A)))

Activity Category	UDOT Criteria(1) Leq (h)	Evaluation Location	Activity Description
A	56	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	66	Exterior	Residential
C	66	Exterior	Active sports areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails and trail crossings.
D	51	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E	71	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D or F.
F	No Limit	-	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	No Limit	-	Undeveloped lands that are not permitted.

(1) Hourly A-weighted sound level in decibels reflecting a 1 dBA "approach" value below 23CFR 772 values

KEY: transportation, barrier, traffic noise abatement, highways

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72-6-111

R930. Transportation, Preconstruction.
R930-7. Utility Accommodation.
R930-7-1. Purpose.

(1) The purpose of this rule is to:

(a) maximize public safety;

(b) provide for efficient highway operations and maintenance of roadways:

(c) maximize aesthetic quality;

(d) minimize future conflicts between the highway system and utility companies serving the general public; and

(e) ensure that use and occupancy by utility companies do not impair or increase the cost of future highway construction, expansion, or maintenance or interfere with any right of way reserved for these purposes.

(2) This rule prescribes conditions under which utility facilities may be accommodated on right of way and sets forth the state's regulations covering the placement and relocation of utility facilities in conflict with the construction and maintenance of highways. General installation requirements, general and definitive design requirements, and utility construction and inspection requirements apply to indirect and private facilities within the right of way. Within UDOT's sole discretion, indirect and private facilities may be allowed on UDOT's right-of-way by lease.

(3) This rule should be interpreted to achieve maximum lawful public use of right of way for transportation purposes and to ensure that utility installations and operations affecting state right of way are accomplished in accordance with state and federal laws and regulations. It is in the public interest for utility facilities to be accommodated within rights of way when the accommodation does not adversely affect the integrity of highway features or occupy space within the right-of-way that conflicts with transportation purposes or future use of the highway. The permitted use and occupancy of right of way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public. Utility facilities may be required to relocate outside of the right of way to accommodate UDOT's projects.

(4) This rule is provided to facilitate the establishment of consistent expectations and effective working relationships between UDOT and utility companies through continuous communication, coordination and, cooperation.

(5) Through the Code of Federal Regulations (23 CFR, Part 645.215(a)), the U.S. Department of Transportation requires each state to submit a statement to the Federal Highway Administration (FHWA) on the authority of utility companies to use and occupy the right of way of state highways, the state highway agency's power to regulate the use, and the policies the state employs or proposes to employ for accommodating utilities within the right of way of Federal-aid highways under its jurisdiction. This rule demonstrates compliance to FHWA.

R930-7-2. Authority and Source Documents.

This rule is enacted under the authority of Section 72-6-116(2), wherein UDOT is authorized and given the responsibility to regulate and make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utility facilities within state administered highways, including ordering their relocation as may become necessary.

(1) Utah Code provides for the accommodation of utility facilities within the right of way and provides UDOT the authority to promulgate rules and regulations for administering those provisions. Accordingly, this rule has been developed pursuant to the following state and federal laws, codes, regulations, policies:

(a) Utah Code, Title 54, Public Utilities, Section 54-3-29;

(b) American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities within Highway Right of Way and A Policy on the Accommodation of Utilities within Freeway Right of Way; and

(c) AASHTO publications, Roadside Design Guide and A Policy on Geometric -Design of Highways and Streets.

(2) This rule incorporates by reference 23 CFR Section 645, Subpart B, (November 22, 2000).

(3) UDOT has secured the authority from FHWA to issue permits for the use or occupancy of the right of way by utility facilities on Federal-aid highways. The use of Federal-aid highway right of way by utilities shall be in accordance with 23 CFR 645.215.

R930-7-3. Definitions.

(1) "Abandoned facility" is a utility facility that is not in use, no longer actively providing a service and is physically disconnected from the operating facility that is still in use and still actively providing a service. Abandoned facilities remain the property of the utility company.

(2) "Access control" is the regulation of public access to and from properties abutting the highway facilities. The two basic types of access control are:

(a) "No access (NA)" means access to through-traffic lanes is not allowed except at interchanges. Crossings at grade and direct driveway connections are prohibited.

(b) "Limited access (LA)" means access to selected public roads may be provided. There may be some crossings at grade and some private driveway connections.

(3) "Administrative citation" is a letter from UDOT to a utility company citing one or more non-compliance items and proper redress requirements such as action on the appropriate bond, revocation of permit, and revocation of a license agreement.

(4) "AASHTO" is the American Association of State Highway and Transportation Officials.

(5) "Backfill" means the replacement of soil removed during construction. It may also denote material placed over or around structures and utilities.

(6) "Bedding" means the composition and shaping of soil or other suitable material to support a pipe, conduit, casing, or utility tunnel.

(7) "Boring" means the operation by which carriers or casings are pushed or jacked under highways without disturbing the highway structure or prism. Bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

(8) "Carrier" means a pipe directly enclosing a transmitted fluid (liquid, gas, or slurry).

(9) "Casing" is a larger pipe, conduit, or duct enclosing a carrier.

(10) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon traffic volumes, speeds, and roadside geometry.

(11) "Coating" is material applied to or wrapped around a pipe.

(12) "Conduit" is an enclosed tubular casing for the protection of wires and cables.

(13) "Depth of bury (cover)" means the depth from ground or roadway surface to top of pipe, conduit, casing, cable, utility tunnel, or similar facility.

(14) "Deviation" means a granted permission to depart from the standards and requirements of this rule.

(15) "Emergency work" is utility company work required to prevent loss of life or significant damage to property.

(16) "Encasement" is a structural element surrounding a carrier or casing.

(17) "Encroachment" means the unauthorized use of highway right of way.

(18) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right of way.

(19) "Environmentally protected areas" are areas that include, but are not limited to, wetlands, flood plains, stream channels, rivers, threatened or endangered species, archaeological sites, and historic sites.

(20) "Expressway" is a divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

(21) "Federal-aid highways" are highways eligible to receive Federal-aid.

(22) "FHWA" is the Federal Highway Administration.

(23) "Flexible carrier pipe" is a plastic, fiberglass, or metallic pipe having a large diameter to wall thickness ratio and which can be deformed without undue stress.

(24) "Flowable fill" is low strength flowable concrete as defined in UDOT Standard Specification 03575.

(25) "Freeway" is an expressway with full control of access.

(26) "Frontage road" is a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(27) "Grade" is the rate or percent of change in slope, either ascending or descending, measured along the centerline of a roadway or access.

(28) "Grounded" means electrically connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

(29) "Grout" is a cement mortar or slurry of fine sand or clay.

(30) "Highway, street, or road" are general terms denoting a public way for the transportation of people, materials, and goods, but primarily for vehicular travel, including the entire area within the right of way.

(31) "Horizontal directional drilling" (HDD), also known as directional boring and directional drilling, is a method of installing underground pipes and conduits from the surface along a prescribed bore path. The process is used for installing telecommunications and power cable conduits, water lines, sewer lines, gas lines, oil lines, product pipelines, and casings used for environmental remediation. It is used for crossing waterways, roadways, congested areas, environmentally protected areas, and any area where other methods are not feasible.

(32) "Indirect facilities" are facilities owned by a utility company or entity that does not directly serve the public and the facilities provide services to or are rented to other utility companies.

(33) "Interstate highway system" (Interstate) is the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments.

(34) "License Agreement or Statewide Utility License Agreement" is a document by which UDOT licenses the use and occupancy, with conditions, of highway rights of way for utility facilities.

(35) "Manhole" or "utility access hole" is an opening in an underground system that workers or others may enter for the purpose of making installations, removals, inspections, repairs, connections, and tests.

(36) "Median" is the portion of a divided highway separating the traveled ways for traffic in opposite directions.

(37) "MUTCD (Utah MUTCD)" means the current version of Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(38) "Pavement structure" is the combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

(39) "Permit" means encroachment permit.

(40) "Pipe" is a tubular product made as a production item for the transmission of liquid or gaseous substances. Cylinders formed from plate material in the fabrication of auxiliary equipment are not pipe as defined here.

(41) "Pipeline" is a continuous carrier used primarily for the transportation of liquids, gases, or solids from one point to another using either gravity or pressure flow.

(42) "Plowing" means the direct burial of utility lines by means of a mechanism that breaks the ground, places the utility line, and closes the break in the ground in a single operation.

(43) "Practicable" means reasonably capable of being accomplished or feasible as determined by UDOT.

(44) "Relocate" means the adjustment of utility facilities when found by UDOT to be necessary for construction or maintenance of a highway. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring the necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(45) "Right of way" is a general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

(46) "Roadside" is a general term denoting the area between the outer edge of the roadway shoulder and the right of way limits.

(47) "Roadway" is the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

(48) "Slope" is the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(49) "State highways" are those highways designated as State Highways in Title 72, Chapter 4, Designation of State Highways.

(50) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. It also includes buildings, signs, and UDOT facilities with foundations.

(51) "Subsurface Utility Engineering (SUE)" is the management of certain risks associated with utility mapping at appropriate quality levels, utility coordination, utility relocation, communication of utility data, utility relocation cost estimates, implementation of utility accommodation policies, and utility design. SUE tools include traditional records, site surveys, and new technologies such as surface geophysical methods and non-destructive vacuum excavation, to provide quality levels of information. The SUE process for collecting and depicting information on existing subsurface Utility Facilities is described in ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

(52) "Trenched" means installed in a narrow open excavation.

(53) "Trenchless (Untrenched)" means installed without breaking the ground or pavement surface by a construction method such as directional drilling, boring, tunneling, jacking, or auguring.

(54) "UDOT" is the Utah Department of Transportation and where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, means an authorized representative.

(55) "Utility" or "utility facility" means privately, publicly,

cooperatively, or municipally owned pipelines, facilities, or systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities, which directly service the public.

(56) "Utility appurtenances" include but are not limited to pedestals, manholes, vents, drains, rigid markers, meter pits, sprinkler pits, valve pits, and regulator pits.

(57) "Utility company" is a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions, and where referenced includes authorized representatives, contractors, and agents.

(58) "Vent" is an appurtenance designed to discharge gaseous contaminants from a casing.

R930-7-4. Scope.

(1) This rule supersedes portions of Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights of Way including Section 5 and portions relating to utility accommodation or that refer to utilities in the right of way or percent of reimbursement, which are part of R930-6 at the time of enactment of this rule.

(2) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-7-5. Application.

(1) This rule applies to privately, cooperatively, and publicly owned utility companies, including utility companies owned by political subdivisions, and shall include telecommunication, gas, oil, petroleum, electricity, cable television, water, sewer, data and video transmission lines, drainage and irrigation systems, and other similar utilities to be located, accommodated, adjusted or relocated within, on, along, across, over, through, or under the highway right of way. This rule does not apply to utility facilities that are required for UDOT highway purposes. This rule applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.

(2) This rule applies to Federal-aid highway projects including local government projects. In compliance with 23 CFR 645.209(g) local governments are required to enter into formal agreements with UDOT that provide for a degree of protection to the highway at least equal to the protection provided by this rule.

R930-7-6. General Installation Requirements.

(1) General.

(a) Utility companies with facilities directly serving the public desiring to use right of way under the jurisdiction of UDOT for the installation or maintenance of any utility facility must be licensed to do so by entering into a Statewide Utility License Agreement with UDOT. This License Agreement sets forth the procedures and conditions for the issuance of encroachment permits for all installations statewide. Encroachment permits are not issued without a License Agreement first being executed. UDOT may impose additional restrictions or requirements for License Agreements or encroachment permits.

(b) A permitted facility shall, if necessary, be modified by the utility company to improve safety or facilitate alteration or maintenance of the right of way as determined by UDOT.

(c) Companies or entities that do not provide direct utility service to the public are prohibited from installing or constructing longitudinal facilities or site towers or poles within the right-of-way by permit. UDOT will not issue any permits for this type of facilities.

(2) License Agreements or Statewide Utility License Agreements.

(a) Agreements are executed by UDOT and utility companies to set forth the terms and conditions for the accommodation and maintenance of utility facilities within the right of way. A License Agreement is required for, but does not guarantee the approval of encroachment permits.

(b) As part of executing a License Agreement with UDOT, owners of facilities located in the right of way are required to post a continuous bond in the amount of $100,000, naming UDOT as the insured, to guarantee satisfactory performance. The Statewide Utilities Engineer may approve a lesser amount.

(c) A public utility is exempt from the bond requirements described in this section if the public utility:

(i) is a member of the municipal insurance pool;

(ii) is a political subdivision; or

(iii) at UDOT's option carries liability insurance with minimum coverage of $1,000,000 per occurrence and as more specifically described in its License Agreement.

(d) Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way. The utility company is liable for all restoration costs incurred as a result of damages caused by its utility, and its liability is not limited to the amount of the bond.

(e) License agreements may be terminated at any time by either party upon 30 days advance written notice to the other. Permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement and permits. The obligation to maintain the $100,000 bond continues until the utility company's facilities are removed from UDOT's right of way.

(3) Emergency Work.

(a) In all emergency work situations, the utility company or its representative shall contact UDOT immediately and on the first business day shall contact UDOT to complete a formal permit. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time period is considered to be a violation of the terms and conditions of the utility company's license agreement. At the discretion of the utility company, emergency work may be performed by a bonded contractor, public agency, or a utility company. None of the provisions of this rule are waived for emergency work except for the requirement of a prior permit.

(4) One Call Requirements.

(a) Underground facilities are not permitted within the right of way unless the utility company subscribes to Blue Stakes of Utah and other appropriate "call-before-you-dig" systems, or otherwise provides utility plans as detailed in Section R930-7-11(6)(a) of this rule.

(5) Preservation of New Pavement.

(a) Cuts or open excavations on newly constructed, paved, or overlaid highways are not allowed for two years. If an emergency cut or excavation occurs, the responsible utility company shall comply with any special conditions imposed by UDOT regarding restoration of the roadway.

(6) Encroachment Permits.

(a) Encroachment Permits on State Highways.

Utility companies shall obtain an encroachment permit from UDOT for the installation and maintenance of utility facilities on the right of way. Encroachment permits are approved or disapproved by UDOT. Applications for encroachment permits are submitted to the Region Permits Officers by the utility company or its contractor. No utility company or utility company contractor shall begin any utility work on the right of way until an approved encroachment permit is issued by UDOT and the utility company is authorized to proceed in writing. Prior to the issuance of encroachment permits, fees are assessed to cover related costs incurred by

UDOT including costs for planning, coordination, and utility plan review.

If the utility company expects work to significantly impact travel lane capacity, UDOT recommends the utility company contact the appropriate Region Permit Office to discuss concepts in advance of submitting an encroachment permit application.

Utility companies shall submit two sets of plans depicting the proposed installation. The plans shall be sized as required by UDOT and include utility company identification, work location, utility type and size, type of construction, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, right of way limits, and traffic control plans. Traffic control plans shall conform to the Utah MUTCD as outlined in Section R930-7-7(1)(d), are mandatory for each instance of utility construction or maintenance, and shall be attached to each permit application.

Utility companies may authorize their contractors to obtain permits on their behalf. All terms and conditions set forth in the License Agreement apply. The utility company's construction forces or the utility contractor shall carry a copy of the approved permit at all times while working on the right of way.

(b) Bonding and Liability Insurance Requirements.

(i) Individual (one-time use) Encroachment Permit Bonding Requirements. As authorized by Sub-section 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a Performance and Warranty Bond, using UDOT's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A separate Performance and Warranty Bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms and conditions of previous permits issued as determined by UDOT. The amount of the bond is determined by the UDOT Region Permits Officer based on the scope of work being performed but will not be less than $10,000.

(ii) Statewide (multiple use) Encroachment Permit Bonding Option. In lieu of posting multiple individual one-time use bonds, encroachment permit applicants who routinely acquire encroachment permits may elect to post a statewide performance and warranty bond, using UDOT's approved bond form. A statewide bond satisfies bonding requirements for work in all UDOT Regions. The bond amount is determined by UDOT but will not be less than $100,000. This bond is in addition to the bond for the License Agreement.

(iii) Inspection Bond. UDOT may require an additional inspection bond to ensure payment for UDOT field review and inspection costs before an encroachment permit is granted.

(iv) Proceeds Against the Bond. UDOT may proceed against the bond to recover all expenses incurred if payment is not received from the permit applicant within 45 calendar days of receiving an invoice. Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to utility caused damages. Failure by the utility company to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the removal of the utility from the right of way.

(v) Liability Insurance Requirements. Permit applicants are also required to provide a certificate of liability insurance in the minimum amounts of $1,000,000 per occurrence and $2,000,000 in aggregate. Failure to meet this requirement will result in application denial. Liability insurance coverage is required throughout the life of the permit and cancellation will result in permit revocation.

(vi) Information about bond forms and liability insurance requirements are available on UDOT's website at: http://www.udot.utah.gov/go/encroachmentpermit

(c) Assignment of Permits. Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to execute a License Agreement.

(d) Indemnification. Permit holders performing utility work on the right of way shall, at all times, indemnify and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work. Permit holders shall also be responsible for the completion, restoration, and maintenance of any excavation for a period of three years unless UDOT requires a longer period of indemnification due to specific or unique circumstances.

(e) Cancellation of Permits and Termination of License Agreement. The following situations will cause the cancellation of permits and/or termination of the License Agreement:

(i) A utility company's failure to maintain a valid bond in the amount required;

(ii) A utility company's failure to comply with the terms and conditions of the License Agreement;

(iii) A utility company's failure to comply with the requirements of the encroachment permit; and

(iv) A utility company's failure to pay any sum of money for costs incurred by UDOT in association with installation or construction review, inspection, reconstruction, repair, or maintenance of the utility facilities.

When the permit is canceled, UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the utility company. Prior to any cancellation, UDOT shall notify the utility company in writing, setting forth the violations, and will provide the utility company a reasonable time to correct the violations to the satisfaction of UDOT. UDOT may also not issue any further permits to utility companies that do not comply with this rule, permit requirements, or the License Agreement.

R930-7-7. General Design Requirements.

(1) General.

(a) Joint use of state right of way may impact both the highway and the utility. Each utility company requesting the use of right of way for the accommodation of its facilities is responsible for the proper planning, engineering, design, construction, and maintenance of proposed installations. The utility company shall coordinate with UDOT and develop its projects to meet design standards and to optimize safety, cost effectiveness, and efficiency of operations for both the utility company and the state. Utility companies are directed to the following AASHTO publications for assistance:

(i) Roadside Design Guide;

(ii) A Policy on Geometric Design of Highways and Streets;

(iii) A Guide for Accommodating Utilities within Highway Right of Way; and

(iv) A Policy on the Accommodation of Utilities within Freeway Right of Way.

(b) The utility company is responsible for the design, construction, and maintenance of its facilities installed within the right of way. All elements of these facilities including materials used, installation methods, and locations shall be subject to review and approval by UDOT.

(c) Plans, Drawings and Specifications. The utility company shall provide UDOT with comprehensive plans, drawings and specifications as may be required for all proposed utility facilities within the right of way. Utility plan submittals shall contain physical features of the utility site including, but not limited to the following:

(i) highway route number;

(ii) highway mile post locations;

(iii) map with route and site location;

(iv) existing features such as manholes, structures,

drainage facilities, other utilities, access controlled and right of way lines, center line of highway relative to the utility facility location, and relevant vertical information;

(v) plan and drawing scales; and

(vi) legend including definition of symbols used.

The plans, drawings, and specifications shall also contain administrative information, identification and type of materials to be used, relevant information on adjacent land classification and ownership, related permits and approvals if required, and identification of the responsible Engineer of Record.

(d) Traffic Control Plans. The utility company shall provide traffic control plans (TCP) that conform to the current Utah MUTCD and UDOT Traffic Control Standards and Specification.

(e) The utility company is responsible to ensure compliance with industry codes and standards, the conditions and special provisions specified in the permit, and applicable laws, rules and regulations of the State of Utah and the Code of Federal Regulations.

(f) All utility facility installations located in, on, along, across, over, through, or under the surface of the right of way, including attachments to highway structures, are the responsibility of the utility company and, as a minimum, shall meet the following utility industry and governmental requirements.

(i) Electric power and communications facilities shall conform to the current applicable National Electric Safety Code.

(ii) Water, sewage and other effluent lines shall conform to the requirements of the American Public Works Association or the American Water Works Association.

(iii) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and applicable industry codes.

(iv) Liquid petroleum pipelines shall conform to the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(v) Any pipelines carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of the materials.

(vi) Telecommunications with longitudinal installations within Interstate, Freeway and other Access Controlled Highway right of way shall conform to R907-64.

(2) Subsurface Utility Engineering.

(a) The use of Subsurface Utility Engineering (SUE) shall be required as an integral part of the design for new utility facility installations on the right of way when determined by UDOT to be warranted.

R930-7-8. Definitive Design Requirements.

(1) Location Requirements.

(a) Longitudinal Installations. The type of utility construction, vertical clearances, lateral location of poles and down guys, and related ground mounted utility facilities along roadways are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. Longitudinal utility facilities shall be located on a uniform alignment and as close to the right of way line as practicable. The joint use of pole lines is acceptable and encouraged; however, all installations shall be located so that all servicing may be performed with minimal traffic interference. The following additional requirements apply to longitudinal installations.

(i) Utility facilities shall be located so as to minimize the need for future utility relocations due to highway improvements, avoid risks to the highway, and not adversely impact environmentally protected areas.

(ii) The location of utility installations along urban streets with closely abutting structures such as buildings and signs generally requires special considerations. These considerations shall be resolved in a manner consistent with the prevailing limitations and as approved by UDOT.

(iii) The location of utility facilities and associated appurtenances shall be in accordance with the Americans with Disabilities Act.

(iv) The horizontal location of utility facilities and appurtenances within the right of way shall conform to the current edition of the AASHTO Roadside Design Guide.

(v) Adequate warning devices, barricades, and protective devices must be used to prevent traffic hazards. Where circumstances necessitate the excavation closer to the edge of pavement than established above, concrete barriers or other UDOT approved devices shall be installed for protection of traffic in accordance with UDOT Traffic Control Standards and UDOT's Supplemental Drawings.

(vi) There are greater restrictions on the accommodation of utility facilities within interstate, freeway, and other access controlled highway right of way. See Section R930-7-10 for details.

(b) Overhead Installations.

(i) Minimal vertical clearances for installed overhead lines are 18 feet for crossings and longitudinal installations, and 23 feet for intersections. In addition, the vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges and above ground UDOT facilities shall meet or exceed the current edition of the National Electrical Safety Code. Where overhead lines cross UDOT above ground facilities, including but not limited to signs, traffic signal heads, poles, and mast arms, vertical and lateral clearance shall meet OSHA working clearances for electrical lines in effect at the time of the installation which will accommodate maintenance work by UDOT personnel without having to discharge or shield the lines.

(ii) Utility companies planning to attach cable to other utility company poles shall obtain approval from the owner of the poles prior to a permit being issued by UDOT.

(iii) The utility facility shall conform to the current edition of the AASHTO Roadside Design Guide. Where there are existing curbed sections, utility facilities shall be located as far as practicable behind the face of curbs and, where feasible, behind sidewalks at locations that will not interfere with adjacent property use. In all cases there shall be a minimum of two feet clearance behind the face of the curb. All cases shall be resolved in a manner consistent with prevailing limitations and conditions.

(iv) Before locating a utility facility at other than the right of way line, consideration shall be given to designs using self-supporting, armless single pole construction, with vertical alignment of wires or cables, or other techniques permitted by government or industry codes that provide a safe traffic environment. Deviations from required clearances may be made where poles and guys can be shielded by existing traffic barriers or placed in areas that are inaccessible to vehicular traffic.

(v) Where irregular shaped portions of the right of way extend beyond or do not reach the normal right of way limits, variances in the location of utility facilities may be allowed to maintain a reasonably uniform alignment and thereby reduce the need for guys and anchors between poles and roadway.

(c) Subsurface Installations.

(i) Underground utilities may be placed longitudinally outside of the pavement by plowing or open trench method. Underground utilities shall be located on a uniform alignment and as near as practicable to the right of -way line to provide a safe environment for traffic operations, preserve the integrity of the highway, and preserve space for future highway improvements or other utility facility installations. The

allowable distance from the right of way line will generally depend upon the terrain and obstructions such as trees and other existing underground and overhead objects. On highways with frontage roads, longitudinal installations shall be located between the frontage roads and the right of way lines. Utility companies shall include the placement of markers referenced in Section R930-7-11(5).

(ii) Unless UDOT grants a deviation, underground utility installations across existing roadways shall be performed by trenchless method in accordance with UDOT requirements and casings may be required. Pits shall be located outside of the clear zone and at least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps. On low traffic roadways and frontage roads, as determined by UDOT, bore pits shall be at least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb and meet clear zone requirements from the edge of the traveled way whichever is greater. Bore pits shall be located and constructed so as to eliminate interference with highway structural footings. Shoring shall be used where necessary.

TABLE 1

Bore Pit Locations

Bore Pit Set Back	Outside Clear Zone
At least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb	At least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps.

(iii) The depth of bury for all utility facilities under pavement shall be a minimum of four feet below the top of pavement or existing grade including open drainage features. Where utility facilities are installed within 20 feet from the edge of pavement, the depth of bury shall be a minimum of five feet below top of grade so as to allow for installation of UDOT signs or delineators. Utility facilities under sidewalks shall be installed a minimum of three feet below the top of sidewalk.

(iv) Utility facilities installed greater than 20 feet from the edge of pavement shall be installed a minimum depth of three feet below grade. Specific types of facilities such as high pressure gas lines or petroleum lines may require additional cover.

(v) All underground utilities installed in the right of way must meet the minimum standards for compaction as outlined in the current edition of the UDOT Standards and Specifications for Road and Bridge Construction.

(vi) Where minimum depth of bury is not feasible, the facility shall be rerouted or, if permitted by UDOT, protected with a casing, encasement, concrete slab, or other suitable protective measures.

TABLE 2

SUMMARY OF UDOT DEFINITIVE UTILITY REQUIREMENTS
MINIMUM DEPTH OF BURY
Longitudinal and Crossing Installations
All underground utilities (cased and uncased)

Under Pavement Surface	Under Sidewalks	Under Ditch	Less than 20 ft. from edge of pavement	Greater than 20 ft. from edge of pavement
Min. of four ft. below top of pavement	Min. of three ft. below top of sidewalk	Min. of three ft. below low point of ditch	Min. of five ft. below natural grade	Min. of three ft. below natural grade

(d) Crossings.

(i) Utility crossings shall be at 90 degrees unless a deviation is approved by UDOT. Crossing installations under paved surfaces shall be by trenchless methods. Jetting by means of water or compressed air is not permitted.

(ii) Utility crossings shall be avoided in deep roadway cuts, near bridge footings, near retaining and noise walls, at highway cross drains where flow of water may be obstructed, in wet or rocky terrain where it is difficult to attain minimum cover, and through slopes under structures.

(e) Median Installations.

(i) Overhead utility facilities such as poles, guys, or other related facilities shall not be located in highway medians. Deviations may be considered for crossings where wide medians provide for sufficient space to meet clear zone requirements from the edges of the travelled ways.

(f) Appurtenances.

(i) Utility appurtenances shall be located outside the clear zone and as close to the right of way line as practicable. Where these requirements cannot be met and no feasible alternative exists, a deviation to locate appurtenances within the clear zone in areas that are shielded by traffic barriers may be considered after the utility company provides written justification for such location for UDOT review. Cabinets, regulator stations, and other similar utility components shall not be located on the right of way unless they are determined by UDOT to be sufficiently small to allow a deviation.

(ii) Manholes, valve pits, and similar appurtenances shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface.

(iii) Utility access points and valve covers shall be located outside the roadway where practicable. In urbanized areas where no feasible alternative to locating utility access points and valve covers outside of the roadway exists, the utility company must coordinate with UDOT to meet safety, operational, and maintenance requirements of both the utility company and UDOT.

(iv) Utility companies shall avoid placing manholes in the pavement of high speed and high volume highways. Deviations may be considered after written justification for such location is submitted by the utility company and reviewed and approved by UDOT. New manhole installations shall be avoided at highway intersections and within the wheel path of traffic lanes.

(v) Vents, drains, markers, utility access holes, shafts, shut-offs, cross-connect boxes, pedestals, pad-mounted devices, and similar appurtenances shall be located along or across highway rights of way in accordance with the provisions of the Americans With Disabilities Act.

(2) Environmental Compliance.

(a) The utility company shall comply with all applicable state and federal environmental laws and regulations, and shall obtain necessary permits. Environmental requirements include but are not limited to the following.

(i) Water Quality. A "Storm Water General Permit for Construction Activities" is required from the Utah Division of Water Quality for disturbances of one or more acres of ground surface.

(ii) Wetlands and Other Waters of the U.S. A "Section 404 Permit" is required from the U.S. Army Corps of Engineers for any impact to a wetland or water of the U.S.

(iii) Threatened or Endangered (T and E) Species. Comply with the Endangered Species Act; avoid impacts to T and E species or obtain a Permit from the U. S. Fish and Wildlife Service.

(iv) Historic and Archaeological Resources. Comply with the "National Historic Preservation Act"; avoid impacts to historic and archaeological resources. If resources could be impacted, contact the Utah State Historic Preservation Office.

(b) The utility company is responsible for environmental impacts and violations resulting from construction activities performed by the utility company or its contractors.

(c) If UDOT discovers or is made aware of a violation by the utility company or a failure to comply with state and federal environmental laws, regulations and permits, UDOT may revoke the permit, notify appropriate agencies, or both.

(3) Installation of Utilities in Scenic Areas.

(a) The type, size, design, and construction of utility facilities in areas of natural beauty shall not materially alter the scenic quality, appearance, and views from the highway or roadsides. These areas include scenic strips, overlooks, rest areas, recreation areas, adjacent rights of way and highways passing through public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Utility installations in these areas shall not be permitted. Deviation from this requirement may be allowed if there is no reasonable or feasible alternative as determined by UDOT based on written justification submitted by the utility company. On Federal-aid highways, all decisions related to utility installations within these areas shall be subject to the provisions detailed in 23 CFR 645.209(h).

(i) New underground utility installations may be permitted within scenic strips, overlooks, scenic areas, or in the adjacent rights of way, when they do not require extensive removal, or alteration of trees, and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(ii) New overhead installations of communication and electric power lines are not permitted in such locations unless there is no feasible and reasonable alternative as determined by UDOT. Overhead installations shall be justified to UDOT by demonstrating that other locations are not available and that underground facilities are not technically feasible, economical or are more detrimental to the scenic appearance of the area.

Any installation of overhead facilities shall be made at a location and in a manner that will not detract from the scenic quality of the area being traversed. The installation shall utilize a suitable design and use materials aesthetically compatible to the scenic area, as approved by UDOT.

(4) Casing and Encasement Requirements.

(a) General. A carrier pipe is sometimes installed inside of a larger diameter pipe defined as a casing. Casings are typically used to provide complete independence of the carrier pipe from the surrounding roadway structure, and to provide adequate protection to the roadway from leakage of a carrier pipeline. It also provides a means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(b) Casing requirements for crossing installations.

(i) All pipelines under pressure crossing under the roadbed of highways shall be in casings unless the pipeline is welded steel, meets industry corrosion protection standards, complies with federal and state requirements, and meets accepted industry standards regarding wall thickness and operating stress levels. In some cases UDOT may require a casing regardless of these exceptions if needed to protect the roadway, maintain public safety, or both.

(ii) In urban areas where space is limited for venting or where small pipelines are crossing, specifically intermediate high pressure lines, deviations for casing may be granted by UDOT.

(iii) Where a casing is required, it must be provided under medians, from top of back-slope to top of back-slope for cut sections, five feet beyond toe of slope under fill sections, five feet beyond face of curb in urban sections and all side streets, and five feet beyond any structure where the line passes under or through the structure. Deviations must be approved by UDOT. On freeways, expressways, and other access controlled highways, casings shall extend to the access control lines.

(iv) Utility installations by trenchless technologies, such as jacking, boring, or horizontal directional drilling methods, may be placed under highways without a casing pipe if approved by a UDOT representative.

(v) Where minimum bury is not feasible, the facility shall be rerouted or protected with a casing, concrete slab, or other suitable measures as determined by UDOT.

(c) Casings shall be considered for the following conditions:

(i) as an expediency in the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other access controlled highways, and at other locations where it is necessary to avoid trenched construction;

(ii) as protection for carrier pipe from external loads or shock either during or after construction of the highway; and

(iii) as a means of conveying leaking fluids or gases away from the area directly beneath the roadway to a point of venting at or near the right of way line, or to a point of drainage in the highway ditch or a natural drainage way.

(d) UDOT may require casings for pressurized carriers or carriers of a flammable, corrosive, expansive, energized, or unstable material.

(e) Trenchless installations of coated carrier pipes shall be cased. Permission to deviate from this requirement may be granted where assurance is provided against damage to the protective coating.

(f) Encasement or other suitable protections shall be considered for pipelines with less than minimum cover, such as those near bridge footings or other highway structures, or across unstable or subsiding ground, or near other locations where hazardous conditions may exist.

(g) Rigid encasement or suitable bridging shall be used where support of pavement structure may be impaired by depression of flexible carrier pipe. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall be equal to or exceed the structural requirements of UDOT highway culverts in the UDOT Bridge Design Manual.

(h) Casings shall be sealed at the ends using suitable material to prevent water and debris from entering the annular space between the casing and the carrier. Such installations shall include necessary appurtenances, such as vents and markers.

(5) Mechanical and Other Protective Measures for Uncased Installation.

(a) When highway pipeline crossings are installed without casings or encasement, the following are suggested controls for providing mechanical or other protection.

(i) The carrier pipe shall conform to utility material and design requirements and utility industry and government codes and standards. The carrier pipe shall be designed to support the load of the highway plus superimposed loads operating under all ranges of pressure from maximum internal to zero pressure. Such installations shall use a higher factor of safety in the design, construction, and testing than would normally be required for cased construction.

(ii) Suitable bridging, concrete slabs, or other appropriate measures shall be used to protect existing uncased pipelines which may be vulnerable to damage from construction or maintenance operations. Construction or maintenance activities shall not proceed until protective measures are approved by UDOT.

(b) Uncased crossings of welded steel pipelines carrying flammable, corrosive, expansive, energized, or unstable materials may be permitted if additional protective measures are taken in lieu of encasement. Such measures shall use a higher factor of safety in the design, construction, and testing of the uncased carrier pipe, including thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping, and cathodic protection.

R930-7-9. Utilities on Highway Structures.

(1) General.

(a) The installation of utility facilities on highway structures can adversely impact the integrity and capacity of the structure, the safe operation of traffic, maintenance efficiency, and the aesthetic appeal of the structure. Utility facilities shall not be installed on highway structures except in extreme cases. When installation of utilities at an alternate location exceeds the cost of attaching to the structure by four times, UDOT will consider such an installation. The utility company shall submit documentation requesting installation on highway structures to the UDOT Structures Division for review and approval. Attachment of a utility facility will only be considered if the structure is adequate to support the additional load. This adequacy must be verified by a load rating completed by the utility company following UDOT's Load Rating Policies and Procedures, submitted to UDOT along with the necessary documentation including calculations and a load rating model.

Installing utility facilities within 50 feet of structures may impact the design, installation, operation, maintenance and safety of the structures, and the utility facilities. Utility companies shall address potential impacts when projects are proposed to ensure compatibility between utility facilities and UDOT structures and to assure all relevant utility industry codes and UDOT structural requirements are adequately addressed.

(2) Installation on Highway Structures.

(a) If UDOT allows a structure installation, it shall be at a location and of a design subject to review and approval by UDOT's Structures Department. Utility installations on structures shall not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromising highway features. In addition, the utility installation shall be subject to the following requirements.

(i) Due to variations in highway structure designs, site-specific conditions, and other considerations, there is no standardized method by which utilities are installed on structures. Therefore, each proposed installation shall be considered on its individual merits and shall be individually designed for the specific structure.

(ii) Where installations of pipelines carrying hazardous materials are allowed, the pipeline shall be cased. The casing shall be open or vented at each end so as to prevent possible build-up of pressure and to detect leakage. Where located near streams, casings shall be designed and installed so that leakage does not compromise the stream. If a deviation is allowed for no casing, additional protective measures shall be used including higher standards for design, safety, construction and testing of the pipeline than would normally be required for cased construction.

(iii) All pipeline installations carrying gas or liquid under pressure which by their nature may cause damage or injury if leaked, shall be installed with emergency shutoff valves. Such valves shall be placed within an effective distance on each side of the structure, as approved by UDOT, and shall be automatic if required by UDOT.

(iv) Utility installations on highway structures shall not reduce vertical clearances above rivers, streams, roadway surfaces or rails. Installations should be designed to occupy a position beneath the deck in an interior bay of a girder or beam, or within a cell of a box girder bridge. Installations shall always be above the bottom of girders on a girder bridge or above the bottom of the bottom cord of a truss bridge. Utility installations outside of a bridge structure are unsightly and susceptible to damage and will only be approved by UDOT if there is no reasonable alternative.

(v) All utility facilities installed on highway structures shall be constructed of durable materials, designed with a long life expectancy, and must be installed in a manner that will minimize routine servicing and maintenance.

(vi) Utility facility mountings shall be of sufficient strength to carry the weight of the utility and shall be of a design and type that will not rattle or loosen due to vibrations caused by vehicular traffic. Acceptable utility installation methods are hangers or roller assemblies suspended either from inserts from the underside of the bridge floor or from hanger rods clamped to the flange of a superstructure member. Bolting through the bridge floor is not permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck, the utility placement shall allow adequate clearance to enable full inspection of both the deck and the utility line. UDOT may consider a proposal to support the utility line on top of the floor beams.

(vii) Communication and electric power line installations shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. Cable shall be carried to a manhole located beyond the back-wall of the structure. Access manholes are not allowed in a bridge deck.

(viii) Utility installations shall provide for lineal expansion and contraction due to temperature variations in conjunction with bridge movement.

(ix) All utility facility clearances from structure members must conform to all governing codes and shall not render any portion of the structure inaccessible for maintenance purposes.

(x) The utility company shall be responsible for restoration or repair of any portion of a structure or highway damaged by utility facility installation or use.

(xi) The expansion of an existing utility facility carried by an existing structure may be permitted if the expansion does not adversely impact the performance and load carrying capacity of the structure and otherwise complies with this rule.

(3) Utility Company Responsibilities.

(a) It is the responsibility of the utility company to obtain approval for a highway structure installation. The utility company shall ascertain the extent of UDOT's requirements prior to initiating the design for installation. A Utah registered Professional or Structural Engineer shall be responsible for the design if the installation is allowed. The utility company must prepare and submit complete design documents showing all details of the proposed work. These documents shall include plans, calculations, updated load rating with a Virtis load rating model, the permit application, and any other necessary information. The utility company shall be responsible for protecting, maintaining or relocating its utility installation, including the arrangement of service interruptions, to accommodate future UDOT structure work.

(b) All materials incorporated in the design must be certifiable for quality and strength and full specifications must be provided in support of the design.

(c) Adequate written justification must support the need for installing the utility facility on the structure and demonstrate that there is no viable cost-effective alternative.

(d) All components of the utility attachment shall be protected from corrosion. Steel components shall be stainless, galvanized or painted in accordance with the current UDOT Standard Specifications for Highway and Bridge Construction.

R930-7-10. Utilities within Interstate, Freeway and Access Controlled Right-of-Way.

(1) General Provisions. There are two basic types of access control.

No Access - does not allow access to the through-traffic lanes except at interchanges. Crossings at grade and direct driveway connections are prohibited. Access is controlled by fencing. This is typical of interstates and freeways.

Limited Access - provides access to selected roads. There may be some crossings at grade and some private driveway

connections. This is typical of expressways and certain other highways.

(2) Factors UDOT may consider for allowing accommodation include distance between distribution points, terrain, cost, and prior existence.

(3) Longitudinal telecommunication installations may be allowed under Rule R907-64.

(4) Pursuant to FHWA regulations, UDOT may allow longitudinal accommodation of utility facilities but with greater restrictions within no access and limited access highway right of way as follows:

(a) No access: longitudinal installations on highways with no access are not permitted except in cases where no other feasible location exists and under strictly controlled circumstances. FHWA approval is required for installations on interstate facilities. Longitudinal telecommunication facilities are allowed pursuant to Utah Code Section 72-7-108; and

(b) Limited Access: longitudinal installations on highways with limited access are generally not permitted.

(5) Utility facilities are allowed to cross no access and limited access highway right-of-way but with additional requirements as noted below in Section R930-7-10(7).

(6) Longitudinal Utility Facilities.

(a) In addition to the requirements in Section R930-7-8(1)(a), the following requirements apply.

(i) Service connections are not permitted within no access highway right of way. Service connections are not permitted within limited access highway right of way unless no reasonable alternative exists as demonstrated by the utility company and as reviewed and approved by UDOT.

(ii) Service, maintenance, and operation of utilities installed along and within no access highway right of way may not be conducted from the through-traffic roadways or ramps. All maintenance activities must be accessed from a point approved by UDOT and FHWA.

(iii) An existing utility facility within the right of way acquired for an interstate, freeway, or access controlled highway project may remain if it can be serviced, maintained, and operated without access from the through-traffic roadways or ramps, and it does not adversely affect the safety, design, construction, operation, maintenance, or stability of the interstate, freeway, or access controlled highway. Otherwise, it shall be relocated.

(iv) Where approval for installation is permitted, utility installations and related components shall be buried parallel to the interstate, freeway, or access controlled highway and shall be located within five feet of the outer most right of way limits. Utility appurtenances shall be located as close as possible to the right of way line.

(v) An existing utility carried on an interstate, freeway, or access controlled highway structure crossing a major valley or river may be permitted by UDOT to continue to be carried at the time the route is improved if the utility facility is serviced without interference to the traveling public.

(7) Utility Crossings.

(a) In addition to the requirements in Section R930-7-8(1)(d), the following requirements apply.

(i) A utility following a crossroad or street which is carried over or under an interstate, freeway, or access controlled highway must cross the interstate, freeway, or access controlled highway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps.

(ii) Overhead utility lines crossing an interstate, freeway, or access controlled highway shall be adjusted so that supporting structures are located outside access control lines. In no case shall the supporting poles be placed within the clear zone. Where required for support, intermediate supporting poles may be placed in medians of sufficient width that provide the clear zone from the edges of both travelled ways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the travelled way. When right of way lines and access control lines are not the same, such as when frontage roads are provided, supporting poles may be located in the area between them.

(iii) At interchange areas, supports for overhead utility facilities will be permitted only if located beyond the clear zone of traffic lanes or ramps, sight distance is not impaired, and can be safely accessed.

(iv) Manholes and other points of access to underground utilities may be permitted within the right of way of an interstate, freeway, or access controlled highway if they can be serviced or maintained without access from the through-traffic roadways or ramps. When right of way lines and access control lines are not the same, such as when frontage roads are provided, manholes and other points of access may be located in the area between them.

(v) Where a casing is not otherwise required, it shall be considered as expedient in the insertion, removal, replacement, or maintenance of carrier pipes crossing interstate, freeways, or access controlled highways. Casings shall extend to the access control lines. See Section R930-7-8(4).

(8) Longitudinal Telecommunications Installation.

(a) Installation must comply with R907-64.

(9) Wireless Telecommunications Facilities.

(a) Facilities must comply with R907-64.

R930-7-11. Utility Construction and Inspection.

(1) General Provisions.

(a) The method used for utility work is generally determined by local conditions. The location, terrain, obstructions, soil conditions, topography, and UDOT standards to maintain the integrity and safety of the right of way and roadway are important considerations for the proper placing of utilities. Familiarity and compliance with this rule will facilitate the construction process for utility companies.

(b) UDOT may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. A permit may be revoked for cause if a utility company or contractor is not complying with the terms and limitations of the permit which will require a new permit at the contractor's expense to proceed with the work.

(c) Costs associated with the inspection are the responsibility of the utility company. Failure to pay inspection invoices issued by UDOT may result in revocation of the permit and may require the posting of an inspection bond on future permit applications.

(2) Utility Construction and Maintenance.

(a) No utility construction work by a utility company or a utility company's contractor may begin until a written encroachment permit has been issued to the utility company by UDOT.

(b) Traffic control for utility construction and maintenance operations shall conform to UDOT's current accepted Utah MUTCD or UDOT Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be planned so that closures of intersecting streets, road approaches, or other access points are held to a minimum.

(c) The utility company shall not begin any work on UDOT right of way until the permit is issued and notice to proceed is given to the utility company by UDOT. After notice to proceed is received, the utility company shall complete construction in accordance with UDOT requirements.

(d) When highway utility construction or maintenance activities involve existing underground utility facilities, utility company or contractor shall comply with Title 54, Chapter 8a, Damage to Underground Utility Facilities.

(e) Utility work shall be completed within the number of days specified in the approved permit. When the work is not completed within the specified time UDOT has the option of extending the time or revoking the permit and acting on the appropriate bond to pay for completion of the work. All time extensions granted by UDOT shall be in writing.

(f) Disturbance of areas within highway right-of-way during utility construction shall be kept to a minimum and all right of way shall be restored to the satisfaction of UDOT. All utility construction methods used within the highway right of way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, UDOT Permit Excavation Handbook, the provisions of this rule, and encroachment permit requirements. Unsatisfactory construction work, as determined by UDOT's inspector, shall promptly be corrected to comply with appropriate standards and specifications. UDOT may issue written notification that identifies the deficiencies and the period of time to cure or correct the deficiencies. If the restoration is not performed within the specified time, UDOT may perform or have performed the corrective work and the utility company shall be responsible for all costs incurred.

(g) The utility company shall avoid disturbing or damaging existing highway drainage facilities and is responsible for repairs, including restoration of ditch flow lines. Wherever necessary, the utility company shall provide drainage away from its own facilities to avoid damage to the highway.

(h) The utility company is prohibited from spraying, cutting or trimming trees or other landscape elements unless specific written permission is obtained from UDOT. The approval of an encroachment permit does not include approval of such work unless the cutting, spraying, and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density or restored as otherwise approved by UDOT. The work site shall be left clean and trash free. All debris shall be removed. Reseeding shall be performed in accordance with UDOT's approved schedule.

(i) UDOT may require that any abandoned utility pipe or conduit be removed, capped, or filled with an appropriate material acceptable to UDOT.

(j) All utility facilities located on rights of way shall be adequately maintained. Any physical modifications, relocations, additions, excavations, or impedance of traffic within the right of way shall require the submittal of a new encroachment permit application. No work may begin until the new encroachment permit is approved.

(k) Restoration of the highway right of way disturbed by excavation, grading work, or other activities shall include reseeding and restoration of existing landscaping. All areas which are denuded of vegetation as a result of construction or maintenance shall be reseeded which is subject to inspection and acceptance by UDOT.

(3) Open Trench Construction Traversing Highways.

(a) Open trench utility installations are not permitted unless an acceptable trenchless method is unfeasible such as in unsuitable soil conditions or extremely difficult rock. UDOT may also grant a deviation from requiring trenchless construction where older pavement is severely deteriorated.

(b) Open trench construction on highways is limited to areas where traffic impacts are minimal. Any pavement structure broken, disturbed, cut or otherwise damaged in any way shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, or as otherwise determined by UDOT.

(c) For open trench installations, the utility company is responsible for the restoration and maintenance of the pavement structure for three years as outlined in Section R930-7-6(6)(b), unless a deviation is granted by UDOT. When the utility company or its contractor performing the work is not equipped to or fails to properly repair the damage to the pavement structure, UDOT will repair the damage and bill the utility company for the actual costs incurred, including any administrative costs. All pavement restoration work performed by the utility company shall be completed within 48 hours after completion of the excavation and backfill.

(d) All open trench utility installations shall conform to the applicable provisions of the current UDOT Standard Specifications for Road and Bridge Construction.

(e) It is the utility company's responsibility to restore the structural integrity of the road bed, secure the utility facility against deformation and leakage, assure that the utility trench does not become a drainage channel, and that the backfilled trench doesn't impede or alter road drainage.

(f) Trenches shall be cut to have vertical faces. Maximum width shall be two feet or the outside diameter of the pipe plus one and one-half feet on each side. All trenches shall be shored where necessary and shall meet OSHA requirements.

(g) Bedding shall be provided to a depth of one-half the diameter of the pipe and shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials, and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(h) Backfill shall meet the current UDOT Standard Specification 02056 Embankment, Borrow and Backfill and 03575 Flowable Fill. Additional specifications may be required by UDOT.

(i) Pavement replacement may be performed by either the utility company or a contractor engaged by the utility company. The Region Permits Officer will determine pavement replacement requirements. The utility company is liable for three years from the date of completion of the pavement replacement for the cost of repairs if the backfill subsides or the patched pavement fails.

(j) Where a utility company fails to properly repair any damage to the pavement structure, UDOT may repair the damage and the costs, including administrative costs, will be the responsibility of the utility company.

(4) Trenchless Utility Construction.

(a) Trenchless utility installations are required for all utility crossings of highways or roadways, where practicable. This construction method is required to avoid disturbing the pavement surface, particularly where underground utilities exist on major highways, expressways, or freeways. Only UDOT approved methods may be used to install a utility under a highway.

(b) All trenchless pipeline installations shall extend under and across the entire roadway prism to a point five feet beyond the toes of the fore-slopes, borrow ditch bottom, or across the access controlled right of way lines, but never less than 15 feet from the edge of pavement or a ramp.

(c) Water jetting or tunneling may not be used. Water-assisted or wet boring may be permitted if the utility company can demonstrate to UDOT that the operation will not adversely impact the roadway and sub-grade.

(d) The size of a trenchless operation shall be restricted to the minimum size necessary for the utility installation and shall not exceed the utility facility diameter by more than 5% unless otherwise required based on equipment and product manufacturer's specifications. Grout or flowable fill backfill

shall be used for carriers or casings and for over-breaks, unused holes or abandoned carriers or casings. The composition of the grout shall be cement mortar, a slurry of fine sand or other fine granular materials.

(e) Portals including surface openings and bore pits shall be established safely beyond the highway surface and the clear zone so as to avoid impairing the roadway during installation of the pipeline.

(f) Where a bulkhead seals the pipeline portal, the portal shall be suitably offset from the surfaced area of the highway. Shoring and bulkheading shall conform to applicable federal, state, and local jurisdiction construction and safety standards. Where a bulkhead is not installed in the pipeline, the portal shall be offset no less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the bore pit.

(g) The utility company shall follow manufacturer's guidelines and industry standards for equipment set-up and operation. The utility company shall assess soil conditions to determine the most appropriate installation technique. Subsurface bore paths shall be tracked and recorded by the utility company, and all failed bores shall be appropriately abandoned and backfilled by the utility company.

(h) Drilling fluids shall be prepared and used according to fluid and drilling equipment manufacturer's guidelines. The utility company shall use fluid containment pits at both bore entry and exits points, and shall use appropriate operational controls so as to avoid heaving or loss of drilling fluids from the bore. Antifreeze additives shall be non-toxic and biodegradable products.

(i) The utility company shall dispose of drilling fluids and other materials in permitted facilities that accept the types of chemicals and wastes used in the trenchless operations.

(5) Utility Markers.

(a) The location of utility facilities within highway right of way presents certain risks to construction and maintenance activities, construction personnel, and to the facility itself when work in and around the area of the utility facility is in progress. To minimize risk and maximize safety, it is the utility company's responsibility to provide identification markers and tracer wire or detectable warning tape for all buried facilities located within the right of way.

(b) A trace wire, metallic tape, or other accepted industry material approved by UDOT for locating utilities with geophysical equipment shall be properly installed with all non-metallic underground lines.

(c) The utility company shall place permanent markers identifying the location of underground utility facilities, whether they are crossing the highway or installed longitudinally along the highway. Markers shall not interfere with highway safety and maintenance operations. Preferably, markers are to be located at the right of way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation, and for emergency response, shall appear on the marker.

(d) The utility company shall maintain its markers in good condition. Color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired.

(6) GPS Requirements.

(a) It is the responsibility of the utility company to produce and maintain a set of certified reproducible plans and an electronic file showing the location of all its facilities in the right of way including overhead facilities and crossing points. The utility company is responsible to maintain an accurate file to be used by UDOT for future planning to avoid utility conflicts. These plans shall also include appropriate vertical and horizontal ties to the highway survey control.

(b) For new facility installations, the utility company shall use a survey grade Global Positioning System (GPS) to survey their facility locations and submit an electronic file to UDOT. Specific requirements for survey data will be determined by UDOT. The location survey points shall include major junction points, manholes, valves, changes in line or grade, and any other significant feature that will facilitate installation approval and future planning activities.

(c) If the utility company fails to provide UDOT with a set of plans and files showing the surveyed utility locations upon request then the utility company is required to secure the actual locations of their facilities at no cost to UDOT. If the utility company fails to provide the utility location information requested within ten days, UDOT may hire a Subsurface Utility Engineering (SUE) consultant to locate the utilities at the utility company's expense.

R930-7-12. Maintenance Responsibility.

The utility company is responsible for maintenance and liability of its utility facilities and appurtenances on UDOT right of way or on UDOT property including facilities installed without a Statewide Utility License Agreement or permit, whether operational, out of service, or abandoned.

R930-7-13. Deviations.

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company. UDOT will not consider cost to the utility company as the primary deciding factor in granting a deviation.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal statute and regulations. Requests for these deviations must include the following:

(a) formal request by the utility company; and

(b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

(a) formal recommendation for approval by the UDOT Region Permits Officer or the officer's supervisor;

(b) formal recommendation for approval from the UDOT Region Director;

(c) concurrence of the UDOT Statewide Utilities Engineer; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

R930-7-14. Enforcement.

(1) This rule is subject to enforcement pursuant to and as provided for in Utah Code, and may include, but not be limited to the following:

(a) administrative citations, in letter form, citing non-compliance items and proper redress requirements, including notice that UDOT may take whatever action is necessary to rectify the situation and subsequently submit a claim against the appropriate bond to recover from the utility company actual costs incurred by UDOT;

(b) increased bonding levels to recoup potential restoration costs on current or future utility projects;

(c) denial of future permits until past non-compliance is resolved;

(d) termination of the License Agreement; and

(e) legal action to secure reimbursement from the utility company for costs incurred by UDOT due to damages to the right of way or noncompliance with the permit, rule or License Agreement.

KEY: right-of-way, utilities, utility accommodation
October 24, 2016 72-6-116(2)

R933. Transportation, Preconstruction, Right of Way Acquisition.
R933-1. Right of Way Acquisition.
R933-1-1. Purpose and Authority.

This rule provides the department's procedures for right of way acquisition and the purchase, sale, and exchange of real property. This rule is required by Section 72-5-117 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R933-1-2. Incorporation of Federal Regulations for Federal Financial Assistance Projects.

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register, on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects receiving federal financial assistance.

R933-1-3. Partial Incorporation of Federal Regulations for State Projects Funded Without Federal Financial Assistance.

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects that do not receive federal financial assistance, except that 49 CFR 24.107 is not incorporated and shall not be the basis for recovery of attorney fees or other litigation expenses specified therein. Attorney fees and other litigation expenses shall only be recoverable for projects that do not receive federal financial assistance to the extent expressly provided for by state law.

R933-1-4. Requirements for Purchase, Sale, or Exchange of Real Property.

(1) When purchasing, selling, or exchanging real property, the department may obtain and review the following documents and authorities as the department deems it necessary or appropriate to ensure that the value of the real property is congruent with the proposed price and other terms of purchase, sale, or exchange:

(a) title insurance commitment;
(b) an environmental assessment;
(c) an engineering assessment;
(d) applicable regulatory codes;
(e) an appraisal;
(f) an analysis of past maintenance and operational expenses, when available;
(g) the situs, zoning, and planning information;
(h) a land survey; and
(i) other requirements determined necessary by the department.

(2) This rule shall apply to all purchases, sales, and exchanges of the department, except as otherwise allowed, required or governed by state or federal law. For projects not receiving federal financial assistance, the requirements of this rule do not apply to the purchase, sale, or exchange of property, or to an interest in real property that is under a contract or other written agreement prior to May 5, 2008, or with a value of less than $100,000, as estimated by the department.

KEY: right of way acquisition, condemnation
January 10, 2012 72-5-117
Notice of Continuation October 25, 2016

R940. Transportation Commission, Administration.
R940-7. Marda Dillree Corridor Preservation Fund.
R940-7-1. Purpose and Authority.

(1) Sections 72-2-117(6)(f) and 72-2-117(9)(a) authorize the Utah Transportation Commission to establish this rule. The purpose of this rule is to establish procedures for:

(a) the Utah Department of Transportation to apply for fund money;

(b) the Utah Transportation Commission to award fund money;

(c) repayment conditions; and

(d) creating a corridor preservation advisory council.

R940-7-2. Definitions.

(1) "Commission" means the Utah Transportation Commission.

(2) "UDOT" means the Utah Department of Transportation.

(3) "Council" means the Utah Transportation Corridor Preservation Advisory Council.

(4) "Corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(5) "Fund" means the Marda Dillree Corridor Preservation Fund.

R940-7-3. Utah Transportation Corridor Preservation Advisory Council.

(1) UDOT shall establish a council to provide recommendations and priorities concerning the use of fund money to the commission and assist in prioritizing requests for funding. The council shall be chaired by the Director of Right-of-Way. Additional council members shall be two commission members selected by the chair of the commission, one designated member from each of the metropolitan planning organizations in the state, any additional members appointed by the commission or designated by the council, and representatives with relevant technical expertise or experience.

R940-7-4. Council Responsibilities.

The council shall receive and review all requests for money from the fund and shall prioritize such requests based upon Subsections 72-2-117(6)(a) and (b). Priority shall be given to cost-effective preservation projects which maximize cost savings for future transportation right of way acquisitions.

R940-7-5. UDOT Responsibilities.

(1) In addition to the specified statutory considerations, UDOT may also:

(a) review requests and determine if sufficient studies have been completed in a corridor to:

(i) identify environmentally sensitive areas;

(ii) determine feasible alignments;

(iii) determine cost-effectiveness of the project; and

(iv) allow for adequate public involvement.

(b) forward council recommendations to the commission and request approval for funding specific corridors;

(c) acquire real property or any interest in real property necessary for corridor preservation in corridors authorized by the commission;

(d) manage money of the fund; and

(e) administer repayment contracts with counties and municipalities.

R940-7-6. Procedure for the Awarding of Fund Money.

Requests for money shall be directed to the council for review and prioritization based upon R940-7-4. The results of the evaluation of requests shall be forwarded to the commission. The commission shall review the recommendations of the council as well as any other pertinent factors and approve, adjust, or reject the recommended expenditures in accordance with Section 72-2-117(3)(a). In no event shall fund money be used or made available for relocation assistance.

R940-7-7. Repayment Conditions.

The commission may determine a loan repayment schedule. All corridor preservation loans shall be paid back according to the approved loan repayment schedule or the earlier of when the remainder of the right of way has been acquired, or when the project has been advertised for construction. If the commission determines an alignment for a transportation project is not feasible and property for the alignment was purchased under this program, the property shall be disposed of in accordance with Section 72-5-111. All loan repayments together with rents, lease proceeds, profits, and money resulting from the sale of excess properties shall be returned to the fund.

KEY: Marda Dillree Corridor Preservation Fund, transportation planning, right of way
April 21, 2011 72-2-117(6)(f)
Notice of Continuation October 25, 2016 72-2-117(9)(a)